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TRANSCRIPT OF RECORD.

Supreme Court of the United States

October Term, 1951.

No. 20

THE UNITED STATES OF AMERICA,
Appellant,

vs.

LOUISE VIRGINIA SMITH.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS.

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CAPTION 1

[Caption Omitted]

IN DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TEXAS

SAN ANTONIO DIVISION

PRESENTMENT

[Filed Oct. 2, 1950]

2 Now, on this the 2nd day of October, A. D. 1950, came into open Court the Grand Jury heretofore impaneled, and the roll being called, and a quorum thereof being present, they, through their foreman, J. H. Frost, Jr., presented to the Court the following indictment:

No. 16822 The United States vs. Louise Virginia Smith, an indictment for falsely forging the name of the payee on U. S. Treasurer check and uttering as true said check knowing the endorsement to be forged with intent to defraud, which was received by the Court and ordered to be filed and docketed.

[File Endorsement Omitted.]

3

IN UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF TEXAS

San Antonio Division

No. 16822

UNITED STATES OF AMERICA

vs.

LOUISE VIRGINIA SMITH

(18 U. S. C., Sec. 73)

INDICTMENT

[Filed Oct. 2, 1950]

The grand jury charges:

On or about July 1, 1947, in Bexar County, Texas, within the San Antonio Division of said district, LOUISE VIRGINIA SMITH falsely made and forged the name of the payee, to wit, John C. Roberts, upon the back of a check drawn on the Treasurer of the United States, for the purpose of obtaining and receiving from the United States a certain sum of money, to wit, Ninety Dollars ($90.00), which said check, with its forged endorsement, is described as follows:

> Check drawn on the Treasurer of the United States, No. 11,368,207, dated June 30, 1947, issued at Dallas, Texas, over symbol 311, payable to the order of John C. Roberts.

SECOND COUNT

At the time and place and within the jurisdiction, all as described in the first count hereof, LOUISE VIRGINIA SMITH uttered as true the check described in the first count hereof, then knowing the endorsement thereon to be forged, with the intent to defraud the United States.

A True Bill

/s/ J. H. FROST, Jr.,
Foreman.

/s/ H. W. Moursund,
United States Attorney.

[ENDORSED]: No. 16822 United States District Court Western District of Texas San Antonio Division The United States vs. Louise Virginia Smith Indictment Charge Vio. Sec. 73, Title 18, USC. A true bill /s/ J. H. Frost, Jr., Foreman of the Grand Jury /s/ H. W. Moursund, United States Attorney.

[File Endorsement Omitted.]

IN UNITED STATES DISTRICT COURT

[Title Omitted]

Motion to Dismiss

[Filed Oct. 4, 1950]

Now comes the defendant in the above entitled and numbered cause, and moves the court to dismiss the indictment heretofore returned against her in this cause, for the following reasons, to-wit:

1. That said indictment shows on its face that the offense charged against this defendant was committed more than three years prior to the return of the indictment, and that such offense is barred by limitation.

2. That said indictment shows on its face that the offense charged against this defendant was barred by the statute of limitation of three years, and no facts are alleged which would show that such statute has been suspended as to the particular offense charged in each count of the indictment so as to take it out of said three years statute.

3. That said indictment is insufficient in both counts in that three years had elapsed since the commission of the alleged offense charged in the indictment, and that the offense charged did not come within the provisions of sec. 3287 of Title 18, providing for the suspension of limitation in certain character of cases where the offense was committed while the United States was at war.

Wherefore, defendant prays that upon a hearing hereof, that this motion be granted and that said indictment be dismissed.

/s/ Leonard Brown,
/s/ Archie S. Brown,
Attorneys for Defendant.

[File Endorsement Omitted.]

IN UNITED STATES DISTRICT COURT

[TITLE OMITTED]

ORDER SUSTAINING MOTION TO DISMISS

[Filed Oct. 18, 1950]

On this the 5th day of October, A. D. 1950, came on to be heard in the above entitled and numbered cause, the motion of the defendant to dismiss the indictment heretofore returned against her on the ground that more than three years has elapsed from the time of the commission of the offense as alleged in the indictment and the return of the indictment, and the court, after considering the argument of counsel for the defendant, and the Government, is of the opinion that the motion of the defendant should be sustained.

It is therefore ORDERED, ADJUDGED AND DECREED by the Court that the indictment in this case be and the same is hereby dismissed, and the defendant discharged.

/s/ BEN H. RICE, Jr.,
Judge.

O. K.

/s/ Leonard Brown,
att'y for deft.

Approved as to form.

/s/ H. W. Moursund,
U. S. Attorney.

[File Endorsement Omitted.]

IN UNITED STATES DISTRICT COURT 13

[TITLE OMITTED]

ORDER AMENDING ORDER OF DISMISSAL

[Filed Oct. 30, 1950]

The Order Dismissing the indictment in the above entitled and numbered cause is hereby amended by striking the second word thereof, "this," and adding the following immediately above the signature line:

"DONE AT SAN ANTONIO, TEXAS, this the 16th day of October, A. D. 1950." 14

DONE AT SAN ANTONIO, TEXAS, this the 30th day of October, A. D. 1950.

/s/ BEN H. RICE, Jr.,
United States District Judge.

[Filé Endorsement Omitted.]

15

16 IN UNITED STATES DISTRICT COURT

[TITLE OMITTED]

PETITION FOR REHEARING

[Filed Nov. 9, 1950]

TO THE HONORABLE JUDGE OF SAID COURT:

Now comes the United States of America, plaintiff in the above styled and numbered cause, and moves the court to reconsider its judgment dismissing the indictment herein and for cause shows:

1. This indictment filed October 2, 1950, charges in Count One
17 that defendant forged the name of the payee on the back of a Treasury check for the purpose of obtaining money from the United States, and in Count Two uttering said check knowing the endorsement to be forged, with intent to defraud the United States, both offenses allegedly having been committed July 1, 1947.

In *Bailey v. United States*, 13 F. 2d 325 (9 Cir.), the Second Count at least of a similar indictment was held to charge fraud and therefore to be within the old statute imposing a six-year statute of limitations in fraud cases.

2. Title 18, United States Code, 590(a), enacted August 24, 1942, suspended the statute of limitations in fraud cases until three years after termination of hostilities, such termination being accomplished by Presidential Proclamation No. 2714 at 12:00 Noon, December 31, 1946. Section 21 of Public Law 772, the Act revising
18 the Criminal Code, which section may be found at page 2412, United States Code Congressional Service, West Publishing Company, 1948, repeals among others 18 USC 590(a) and provides: "Any rights or liabilities now existing under such sections or parts thereof shall not be affected by this repeal." In *United States v. Choy Kum*, 91 Fed. Supp. 769, the District Court held that prosecution for a fraud offense committed in 1947 had not been barred by the three-year statute of limitations by the time the indictment was returned in 1950, and more than three years after the offense was committed, because the suspension act 18 USC 590(a) actually suspended the statute of limitations until December 31, 1949. Therefore the statute of limitations for the offenses charged herein was suspended from commencing to run until December 31, 1949.

WHEREFORE, premises considered, the United States of America respectfully requests the court to set aside its judgment dismissing the indictment in this case and to reinstate such indictment and to fix bail for the defendant, bond for bail to be presented to any United States Commissioner for approval.

H. W. MOURSUND,
United States Attorney,

/s/ WM. H. RUSSELL, Jr.,
/t/ WM. H. RUSSELL, Jr.,
Assistant U. S. Attorney,

Attorneys for Plaintiff.

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Copy of this Petition for Rehearing was mailed to Leonard Brown, Esq., National Bank of Commerce Building, San Antonio, Texas, November 9, 1950.

/s/ WM. H. RUSSELL, Jr.
/t/ WM. H. RUSSELL, Jr.

I believe that the foregoing Petition for Rehearing is good in point of law, and it has not been filed for the purpose of delay.

/s/ WM. H. RUSSELL, Jr.,
/t/ WM. H. RUSSELL, Jr.,
Assistant U. S. Attorney.

21

[File Endorsement Omitted.]

22 IN UNITED STATES DISTRICT COURT

[TITLE OMITTED]

DEFENDANT'S REPLY TO PETITION FOR REHEARING

[Filed Nov. 14, 1950]

Now comes the defendant, Louise Virginia Smith, in the above styled and numbered cause, and in reply to the government's petition for a reconsideration of the Court's judgment dismissing the indictment herein, shows as follows:

1. The judgment of this Court dismissing the indictment should not be set aside for the reason that the offense was barred by the 23 Statute of Limitations at the time the indictment was returned and the prosecution commenced.

2. The government contends in its motion that the prosecution is not barred because of the operation of the Suspension Act, 18 USC 590(a), and relies upon the case of *United States v. Choy Kum, et al.*, 91 F. Supp. 769, in support of this contention. While it is true that the indictment in the *Choy Kum* case charged the commission of an offense after the cessation of hostilities as does the indictment in the present case, a careful reading of the *Choy Kum* case will reflect that the contention raised by the defendant, Choy Kum, in his motion to dismiss was that fraud was not an essential ingredient of the offense charged and that for that reason the Suspension Act should not apply to the offense alleged in the indictment. Nowhere in the opinion of the District Judge 24 is there anything which would indicate that the defendant raised the point in that case which was raised by the defendant in the instant case, namely: *that the Suspension Act does not apply to offenses committed after the cessation of hostilities.* This is borne out by the fact that the cases cited by the District Judge in the *Choy Kum* case in support of his decision were in each instance cases in which the question raised was as to whether or not fraud was an essential element of the offense charged, and that in each of these cases the offense was alleged to have been committed *prior* to the cessation of hostilities.

3. The defendant, Louise Virginia Smith, submits that the case of *United States v. Gottlieb*, 165 F. 2d 360, by the Second Circuit, the case which was the primary basis for the decision in the *Choy Kum* case, fully supports her contention in her motion to dismiss

the indictment in the instant case. In the *Gottlieb* case we find on page 363 of the opinion by Judge L. Hand, the following expression regarding the Suspension Act:

> "Besides, the purpose of the amendment was not to let crimes pass unpunished *which had been committed in the hurly-burly of war* . . ." (Italics ours.)

To the same effect is the very language of the Suspension Act itself, which is as follows:

> "*When the United States is at war*, the running of any statute of limitations applicable to any offense (1) involving fraud . . . shall be suspended until three years after the termination of hostilities . . ."

In order to support the Government's contention in its motion, the Suspension Act would have to be rewritten to provide as follows:

> "When the United States is at war and for three years after the termination of hostilities, the running of any statute of limitations applicable to any offense (1) involving fraud . . . shall be suspended."

As the rewriting of the law would effect a basic change in the meaning of the law, so does the contention of the Government in its motion do violence to the plain import of the language used by the Congress in enacting the Suspension Act in question. Under the Suspension Act the Statute of Limitations is suspended as to what offenses? If the statute means what it says, clearly it is confined to offenses committed prior to the enactment of the statute, and during the war until the termination of hostilities. In other words, if an offense had been committed prior to the enactment of the Act and a war was in progress when the Suspension Act was passed, the running of the Statute of Limitations would immediately be suspended as to all offenses committed prior to the enactment of the statute and not yet barred by limitations. What other offenses would come under the operation of the Suspension Act? Clearly only those committed when the United States is at war. To hold that the Act suspended the Statute of Limitations as to offenses committed after the termination of hostilities, would certainly do violence to the plain language of the Act, "When the United States is at war." This is the contention of the defendant in the instant case. It was certainly the conclusion of Judge Learned Hand in the *Gottlieb* case, and it must have been the basis of the ruling

28 *Answer to Defendant's Reply to Petition for Rehearing*

of this Court in the instant case in originally sustaining the motion to dismiss the indictment.

4. The defendant submits that the foregoing expression in the *Gottlieb* case, together with the plain import of the language used in the Suspension Act itself, compels the conclusion that this Act does not apply to offenses committed *after* the termination of hostilities.

WHEREFORE, premises considered, the defendant respectfully requests the Court to deny the Government's motion to set aside the order dismissing the indictment in this cause.

29 /s/ LEONARD BROWN,
/s/ ARCHIE S. BROWN,
Attorneys for Defendant.

A copy of this reply has been personally delivered to the United States District Attorney for the Western District of Texas, Federal Building, San Antonio, Texas, on 14 November, 1950.

/s/ ARCHIE S. BROWN.

[File Endorsement Omitted.]

30

IN UNITED STATES DISTRICT COURT

[TITLE OMITTED.]

ANSWER TO DEFENDANT'S REPLY TO PETITION FOR REHEARING

[Filed Dec. 18, 1950]

TO THE HONORABLE JUDGE OF SAID COURT:

Now comes the United States of America in the above styled and numbered cause, and in answer to defendant's reply to petition for rehearing respectfuliy shows as follows:

The statute cited in the defendant's reply is 18 USC 3287, the revision of 1948. The statute mainly relied upon by the government is 18 USC 590(a), the Act of August 24, 1942, as amended, the pertinent provisions of which read:

> "The running of any existing statute of limitations applicable to any offense against the laws of the United States (1) involving defrauding or attempts to defraud the United States * * * shall be suspended until three years after the termination of hostilities in the present war as proclaimed by the President * * *"

The hostilities were proclaimed terminated as of December 31, 1946, and in the plain words of the statute limitations were suspended until three years thereafter, i. e., until December 31, 1949. 32
In other words, as to the offense charged in the indictment there was no statute of limitations in existence until December 31, 1949, unless it might be said that 18 USC 3287 which became effective September 1, 1948, repealed the old act and that limitations commenced to run on that date. Even if this view be accepted, the three-year statute of limitations commencing to run September 1, 1948, would not have fully run upon the date the instant indictment was returned, being October 5, 1950.

WHEREFORE, the United States of America prays as in its petition for rehearing heretofore filed herein.

H. W. MOURSUND,
United States Attorney,

By /s/ WM. H. RUSSELL, Jr., 33
/t/ WM. H. RUSSELL, Jr.,
Assistant U. S. Attorney.

Copy of this Answer has been mailed to Leonard Brown, Esq., and Archie Brown, Esq., Attorneys for Defendant, National Bank of Commerce Bldg., San Antonio, Texas.

/s/ WM. H. RUSSELL, Jr.
/t/ WM. H. RUSSELL, Jr.

[File Endorsement Omitted.]

34

IN UNITED STATES DISTRICT COURT

[TITLE OMITTED]

ORDER OVERRULING GOVERNMENT'S PETITION FOR REHEARING

[Filed Jan. 4, 1951]

The indictment in the instant case, returned and filed October 2, 1950, charges violations of 18 USCA 73 (1946 Ed.) in the First Count that on or about July 1, 1947, Louise Virginia Smith falsely made and forged the name of the payee upon the back of a check drawn on the Treasurer of the United States for the purpose of obtaining and receiving from the United States the sum of $90.00,
35 and in the Second Count with uttering as true the check described in the First Count, then knowing the endorsement thereon to be forged, with intent to defraud the United States.

The defendant plead the three-year statute of limitation and further that no facts are alleged in the indictment to show that the statute has been suspended as to the particular offense charged in each count of the indictment, i. e., the indictment does not allege fraud or attempted fraud.

The government relied upon the Suspension Act, 18 USC 590(a), being the Act of August 24, 1942, as amended, the pertinent provisions of which read:

> "The running of any existing statute of limitations applicable to any offense against the laws of the United States (1) involving defrauding or attempts to defraud the United States
36 • • • shall be suspended until three years after the termination of hostilities in the present war as proclaimed by the President • • • "

The Second Count of the indictment, at least, charges fraud and is, therefore, within the terms of paragraph (1) of the Suspension Act, 18 USC 590(a). See *Bailey v. United States*, 13 F. 2d 325, 9 Cir.

In view of the disposition to be made of this petition, it is necessary to determine whether or not the First Count of the indictment charges fraud and is, therefore, within the terms of paragraph (1) of the Suspension Act.

The Court found that the three-year statute of limitations is applicable to the offenses charged in the indictment in this case and ordered the same dismissed and the defendant discharged; there-

after the government filed its motion for rehearing praying that the order dismissing the indictment be set aside and the same be reinstated.

The Court is of the opinion that the Suspension Act, 18 USC 590(a), being the Act of August 24, 1942, as amended in 1944, applies only to offenses committed during the time prior to the termination of hostilities. Hostilities were proclaimed terminated as of December 31, 1946. The alleged offense is charged to have occurred July 1, 1947, and the three-year statute of limitations barred prosecution of this offense three years thereafter. "* * * The purpose of the amendmnt (18 USC 590[a]) was not to let crimes pass unpunished which had been committed in the hurly burly of war * * *." *United States v. Gottlieb*, 165 F. 2d 360, page 368. 38

The petition for rehearing is denied.

DONE AT San Antonio, TEXAS, this the 3 day of January, A. D. 1951.

/s/ BEN H. RICE, Jr.,
United States District Judge.

[File Endorsement Omitted.]

IN THE UNITED STATES DISTRICT COURT

[TITLE OMITTED.]

NOTICE OF APPEAL

[Filed Feb. 1, 1951] 39

The United States hereby appeals to the Supreme Court of the United States from the order, as amended, of the United States District Court for the Western District of Texas, San Antonio Division, entered October 15, 1950, petition for rehearing denied January 3, 1951, dismissing the indictment charging the defendant with forgery and false uttering in violation of 18 U.S.C. (1946 Ed.) 73.

Dated, February 1, 1951.

/s/ PHILIP B. PERLMAN,
/t/ PHILIP B. PERLMAN,
Solicitor General,
Department of Justice,
Washington, D. C.

[File Endorsement Omitted.]

IN UNITED STATES DISTRICT COURT

[Title Omitted.]

Order Extending Time for Filing Record on Appeal

[Filed March 5, 1951.]

On this day came on to be heard the motion by appellant to extend the time for filing of record on appeal in the above styled and numbered cause for a period of thirty days from March 12, 1951, and the Court having heard and considered the same, finds that for cause shown the motion for extension of time for filing the record on appeal should be granted.

It Is Accordingly Ordered that time for filing record on appeal herein be and the same is extended to thirty days after March 12, 1951.

Done: This 5th day of March, A. D. 1951.

/s/ Ben H. Rice, Jr.,
United States District Judge.

[File Endorsement Omitted.]

IN UNITED STATES DISTRICT COURT 43

[TITLE OMITTED.]

DESIGNATION OF CONTENTS OF RECORD ON APPEAL.

[Filed March 5, 1951]

Now comes the United States of America, appellant in the above styled and numbered cause, and hereby designate the contents of the record on appeal as follows:

1. The presentment
2. The indictment
3. Defendant's Motion to Dismiss the Indictment
4. Order Dismissing the Indictment
5. Order Amending Order of Dismissal 44
6. Petition for Rehearing
7. Defendant's Reply to Petition for Rehearing
8. Answer to Defendant's Reply to Petition for Rehearing
9. Order Overruling Government's Petition for Rehearing
10. Notice of Appeal
11. Statement as to Jurisdiction
12. Notification to Appellee of Appeal
13. Order Extending Time for Filing Record on Appeal
14. This Designation of Record on Appeal 45

Respectfully requested,

/s/ H. W. MOURSUND,
/t/ H. W. MOURSUND,
United States Attorney,
Attorney for Appellant.

I certify that a copy of the foregoing was mailed defendant, this the 2nd day of March, A. D. 1951.

/s/ WM. H. RUSSELL, JR.,
/t/ WM. H. RUSSELL, JR.,
Assistant U. S. Attorney.

[File Endorsement Omitted.]

46 CLERK'S CERTIFICATE

[Clerk's Certificate to foregoing transcript omitted in printing.]

SUPREME COURT OF THE UNITED STATES

[TITLE OMITTED.]

ORDER NOTING PROBABLE JURISDICTION—APRIL 16, 1951

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is transferred to the summary docket.

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IN THE SUPREME COURT OF THE UNITED STATES

[TITLE OMITTED.]

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF RECORD

[Filed May 3, 1951]

Pursuant to Rule 13, paragraph 9, of this Court, appellant states that it intends to rely upon the following points:

1. The District Court erred in holding that the Wartime Suspension of Limitations Act (section 1 of the Act of August 24, 1942, 56 Stat. 747, as amended by the Act of July 1, 1944, section 19[b], 58 Stat. 667; revised in 1948 as permanent legislation, 18 U.S.C. 3287) "applies only to offenses committed during the time prior to the termination of hostilities."

48

2. The District Court erred in granting the motion to dismiss the indictment.

Appellant deems the entire record, as filed in the above-entitled case, necessary for the consideration of the points relied on.

PHILIP B. PERLMAN,
Solicitor General.

[File Endorsement Omitted.]

U. S. GOVERNMENT PRINTING OFFICE 1951

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MAR. 23 1951

No. 530 20

In the Supreme Court of the United States

OCTOBER TERM, 1950 51

THE UNITED STATES OF AMERICA, APPELLANT,

v.

LOUISE VIRGINIA SMITH

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS

STATEMENT AS TO JURISDICTION

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS, SAN ANTONIO DIVISION

No. 16822 Criminal

UNITED STATES OF AMERICA

vs.

LOUISE VIRGINIA SMITH

STATEMENT AS TO JURISDICTION

In compliance with Rule 37(a)(1) of the Federal Rules of Criminal Procedure and Rule 12 of the Rules of the Supreme Court of the United States, as amended, the United States submits herewith its statement particularly disclosing the basis upon which the Supreme Court has jurisdiction on appeal to review the order of the District Court in this cause dismissing the indictment.

OPINIONS BELOW

The orders of the District Court dismissing the indictment and denying the Government's petition

for rehearing are not reported. Copies of these orders, which state the grounds of dismissal, are attached hereto as an Appendix.

JURISDICTION

The order of the District Court, as amended, dismissing the indictment was entered October 15, 1950, and the order denying the Government's petition for rehearing was entered January 3, 1951. The jurisdiction of the Supreme Court to review on direct appeal the decision of the District Court sustaining, prior to the attachment of jeopardy, the defendant's plea in bar to the indictment is conferred by 18 U.S.C. 3731. See also Rules 37(a)(2) and 45(a), F.R. Crim. P. The following decisions sustain the jurisdiction of the Supreme Court: *United States* v. *Goldman*, 277 U.S. 229, 236-237; *United States* v. *Oppenheimer*, 242 U.S. 85; *United States* v. *Barber*, 219 U.S. 72, 78.

QUESTION PRESENTED

Whether the Wartime Suspension of Limitations Act, which suspended the "running" of any statute of limitations applicable to offenses involving fraud against the United States "until three years after the termination of hostilities" as proclaimed by the President, is applicable to offenses of the type defined which were committed after the date of the proclamation of termination of hostilities, but within the three-year period following that date.

STATUTES AND PROCLAMATION INVOLVED

Section 1 of the Act of August 24, 1942, c. 555, 56 Stat. 747, as amended by the Act of July 1, 1944, c. 358, § 19(b), 58 Stat. 667 (18 U.S.C. (1946 ed.) 590a; now revised as permanent legislation, see 18 U.S.C. (1948 rev.) 3287, *infra*), commonly known as the Wartime Suspension of Limitations Act, provided in pertinent part on July 1, 1947, the date of the offenses involved herein:

> The running of any existing statute of limitations applicable to any offense against the laws of the United States (1) involving defrauding or attempts to defraud the United States or any agency thereof whether by conspiracy or not, and in any manner * * * shall be suspended until three years after the termination of hostilities in World War II as proclaimed by the President or by a concurrent resolution of the two Houses of Congress. * * *

18 U. S. C. (1948 rev.) 3287, which became effective on September 1, 1948, and hence was in effect on October 2, 1950. the date of the return of the indictment involved herein, provides in pertinent part:

> When the United States is at war the running of any statute of limitations applicable to any offense (1) involving fraud or attempted fraud against the United States or any agency thereof in any manner, whether by conspiracy

or not, * * * shall be suspended until three years after the termination of hostilities as proclaimed by the President or by a concurrent resolution of Congress.

* * * * * *

Section 21 of the 1948 Act revising Title 18 of the United States Code (Act of June 25, 1948, c. 645, 62 Stat. 683, 862, 868) provides:

> The sections or parts thereof of the Revised Statutes or Statutes at Large enumerated in the following schedule are hereby repealed. Any right or liabilities now existing under such sections or parts thereof shall not be affected by this repeal.
>
> (Among the enumerated sections is the Wartime Suspension of Limitations Act of August 24, 1942, as amended, *supra.*)

Presidential Proclamation 2714 of December 31, 1946 (12 F.R. 1), provided in pertinent part:

> * * * Although a state of war still exists, it is at this time possible to declare * * * that hostilities have terminated.
>
> NOW, THEREFORE, I, HARRY S. TRUMAN, President of the United States of America, do hereby proclaim the cessation of hostilities of World War II, effective twelve o'clock noon, December 31, 1946.

* * * * * *

STATEMENT

On October 2, 1950, an indictment in two counts was filed in the District Court charging the defendant with having, on or about July 1, 1947, violated Section 29 of the Criminal Code of 1909 (18 U.S.C. (1946 ed.) 73). Count 1 charged that she falsely made and forged the name of the payee upon the back of a check drawn on the Treasurer of the United States for the purpose of obtaining the amount of the check from the Government. Count 2 charged that she uttered the check as true, knowing the indorsement to be forged, with intent to defraud the United States.

The defendant moved to dismiss the indictment on the grounds that it "shows on its face that the offense charged * * * was committed more than three years prior to the return of the indictment" and so was "barred by limitation," and that "the offense charged did not come within the provisions of sec. 3287 of Title 18 (of the United States Code (see *supra*)), providing for the suspension of limitation in certain character of cases where the offense was committed while the United States was at war." On October 15, 1950, the District Court granted the motion to dismiss, the order stating simply that the dismissal was "on the ground that more than three years has elapsed from the time of the commission of the offense as alleged in the indictment and the return of the indictment."

On November 9, 1950, the Government filed a petition for rehearing pointing out that the offenses charged in the indictment involved defrauding the United States; that under the Wartime Suspension of Limitations Act of 1942, as amended, *supra* (18 U.S.C. (1946 ed.) 590a), the running of the statute of limitations applicable to such offenses was suspended "until three years after the termination of hostilities in World War II"; that hostilities in World War II were declared terminated as of December 31, 1946, by Presidential Proclamation 2714 of that date (see *supra*); that, accordingly, the three-year statute of limitations applicable to the offenses charged did not commence to run until three years after December 31, 1946, i.e., until December 31, 1949; and that, consequently, the indictment, which was returned on October 2, 1950, was not barred by the statute of limitations.[1]

On January 3, 1951, the petition for rehearing was denied. In its order of denial, the District Court conceded that at least the second count of the indictment charged an offense involving defrauding the United States within the meaning of the Suspension Act of 1942, as amended, but it held, nevertheless, that the indictment had properly

[1] The petition for rehearing also pointed out that the 1942 Suspension Act was repealed by Section 21 of the Act of June 25, 1948 (the Act revising Title 18 of the United States Code; see *supra*), but that the same Section 21 contains a saving clause with respect to "any rights or liabilities now existing under" any of the repealed laws.

been dismissed for being filed too late (i.e., more than three years after the date of commission of the alleged offenses), because the Suspension Act "applies only to offenses committed during the time prior to the termination of hostilities," whereas the offenses here charged were committed on July 1, 1947, subsequent to the date of the proclamation of termination of hostilities.[2]

THE QUESTION IS SUBSTANTIAL

The issue presented in this appeal is one of obvious importance in the administration of the federal criminal laws. It affects all offenses of the types defined in the suspension statute which were committed during the three-year period between December 31, 1946, and December 31, 1949. It is the Government's position that the statute of limitations for such offenses did not commence to run until the latter date, so that prosecutions therefor may be instituted as late as December 31, 1952 (where the limitations period is, as in this case, the ordinary period of three years). Under the decision appealed from, on the other hand, the statute of limitations for such offenses commenced immediately upon their commission, with the result that the prosecution of large numbers of them are already outlawed.

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[2] In view of its decision holding the indictment to have been properly dismissed on the stated ground, the court found it unnecessary to determine whether or not the first count as well as the second count charged an offense sounding in fraud on the United States.

The Government's construction of the suspension statute is supported by its literal terms. It provides that the "running" of any statute of limitations applicable to any offenses of certain defined types, notably those sounding in fraud on the Government, "shall be suspended until three years after the termination of hostilities" as proclaimed by the President. It makes no distinction between offenses committed before, and offenses committed after, the proclamation of termination of hostilities. Moreover, under the District Court's decision, prosecution for an offense committed on December 31, 1946, may be instituted as late as December 31, 1952, but prosecution for one committed on the following day, January 1, 1947, must have been instituted by January 1, 1950, or is now barred. The Government's construction avoids this anomalous result. Under it, December 31, 1952, is the deadline for instituting prosecutions for all offenses (of the types defined in the suspension statute) committed at any time between the effective date of the original statute (August 24, 1942) and December 31, 1949 (three years after the proclaimed cessation of hostilities).

It is undoubtedly true, as was said in *United States* v. *Gottfried*, 165 F. 2d 360, 368 (C.A. 2); certiorari denied, 333 U. S. 860, that the purpose of the suspension statute was to prevent crimes "committed in the hurly-burly of war" from

passing unpunished.[3] But war does not end with the termination of hostilities. The period of war lasts until the ratification of a treaty of peace or the proclamation of peace. *Hamilton* v. *Kentucky Distilleries Co.*, 251 U.S. 146, 165; *Hijo* v. *United States*, 194 U.S. 315, 323; *Ex parte Sichofsky*, 273 Fed. 694 (S.D. Cal.), affirmed *sub nom. Sichofsky* v. *United States*, 277 Fed. 762 (C.A. 9); cf. *Ludecke* v. *Watkins*, 335 U.S. 160, 166-170; *Woods* v. *Miller Co.*, 333 U.S. 138, 147 (Mr. Justice Jackson, concurring). Consequently, World War II did not end with the termination of hostilities proclaimed by the President on December 31, 1946. On the contrary, the Presidential Proclamation itself explicitly recognized that "a state of war still exists."

The 1942 Suspension Act, as amended, was repealed by Section 21 of the Act of June 25, 1948 (the Act providing for the revision of Title 18 of the United States Code), but the same section also provided that "rights or liabilities now existing under" all of the repealed laws "shall not be affected by this repeal." Section 3287 of revised Title 18 now provides that "When the United States is at war the running of any statute of limitations applicable to (any of certain defined types of offenses, including those involving fraud on the

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[3] The District Court quoted the Second Circuit's remark in the *Gottfried* case in its order denying the Government's petition for rehearing. The *Gottfried* case did not involve the issue here presented.

Government) shall be suspended until three years after the termination of hostilities as proclaimed by the President or by a concurrent resolution of Congress." In our view, it is unimportant whether the 1942 statute (which was in effect at the time of the alleged offenses) or Section 3287 of revised title 18 (which was in effect at the time of the return of the indictment) is the applicable statute in this case. The Reviser's Note to Section 3287 explains that "The phrase 'when the United States is at war' was inserted at the beginning of this section to make it permanent instead of temporary legislation, and to obviate the necessity of reenacting such legislation in the future." Thus, there is nothing in the changed phraseology to indicate that Congress intended to change the meaning of the suspension statute.

It is submitted that the decision of the District Court is erroneous and that the question presented by this appeal is a substantial one which should be settled by the Supreme Court.

Respectfully submitted.

/s/ PHILIP B. PERLMAN,
/t/ PHILIP B. PERLMAN,
Solicitor General.

APPENDIX

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TEXAS, SAN ANTONIO DIVISION

No. 16822 Criminal

UNITED STATES

vs.

LOUISE VIRGINIA SMITH

On this the 5th day of October, A. D. 1950, came on to be heard in the above entitled and numbered cause, the motion of the defendant to dismiss the indictment heretofore returned against her on the ground that more than three years has elapsed from the time of the commission of the offense as alleged in the indictment and the return of the indictment, and the court, after considering the argument of counsel, for the defendant, and the Government, is of the opinion that the motion of the defendant should be sustained.

It is therefore ORDERED, ADJUDGED AND DECREED by the Court that the indictment in this case be and the same is hereby dismissed, and the defendant discharged.

(S.) BEN H. RICE, JR.,
Judge.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

Criminal No. 16822

UNITED STATES OF AMERICA

v.

LOUISE VIRGINIA SMITH

ORDER AMENDING ORDER OF DISMISSAL

The Order Dismissing the indictment in the above entitled and numbered cause is hereby amended by striking the second word thereof, "this", and adding the following immediately above the signature line:

"DONE AT SAN ANTONIO, TEXAS, this the 15th day of October, A. D. 1950"

DONE AT SAN ANTONIO, TEXAS, this the 30th day of October, A. D. 1950.

(S.) BEN H. RICE, JR.,
United States District Judge.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

Criminal No. 16822

UNITED STATES OF AMERICA

vs.

LOUISE VIRGINIA SMITH

ORDER OVERRULING GOVERNMENT'S PETITION FOR REHEARING

The indictment in the instant case, returned and filed October 2, 1950, charges violations of 18 USCA 73 (1946 Ed.) in the First Count that on or about July 1, 1947, Louise Virginia Smith falsely made and forged the name of the payee upon the back of a check drawn on the Treasurer of the United States for the purpose of obtaining and receiving from the United States the sum of $90.00, and in the Second Count with uttering as true the check described in the First Count, then knowing the endorsement thereon to be forged, with intent to defraud the United States.

The defendant plead the three-year statute of limitation and further that no facts are alleged in the indictment to show that the statute has been suspended as to the particular offense charged in each count of the indictment, i.e., the indictment does not allege fraud or attempted fraud.

The government relied upon the Suspension Act, 18 USC 590(a), being the Act of August 24, 1942,

as amended, the pertinent provisions of which read:

> "The running of any existing statute of limitations applicable to any offense against the laws of the United States (1) involving defrauding or attempts to defraud the United States * * * shall be suspended until three years after the termination of hostilities in the present war as proclaimed by the President * * *"

The Second Count of the indictment, at least, charges fraud and is therefore, within the terms of paragraph (1) of the Suspension Act, 18 USC 590(a). See *Bailey* v. *United States*, 13 F. 2d 325, 9 Cir.

In view of the disposition to be made of this petition, it is unnecessary to determine whether or not the First Count of the indictment charges fraud and is, therefore, within the terms of paragraph (1) of the Suspension Act.

The court found that the three-year statute of limitations is applicable to the offenses charged in the indictment in this case and ordered the same dismissed and the defendant discharged; thereafter the government filed its motion for rehearing praying that the order dismissing the indictment be set aside and the same be reinstated.

The court is of the opinion that the Suspension Act, 18 USC 590(a), being the Act of August 24, 1942, as amended in 1944, applies only to offenses committed during the time prior to the termination of hostilities. Hostilities were proclaimed terminated as of December 31, 1946. The alleged offense

is charged to have occurred July 1, 1947, and the three-year statute of limitations barred prosecution of this offense three years thereafter. "* * * The purpose of the amendment (18 USC 590(a)) was not to let crimes pass unpunished which had been committed in the hurly burly of war * * *". *United States* v. *Gottlieb*, 165 F. 2d 360, page 368.

The petition for rehearing is denied.

DONE AT SAN ANTONIO, TEXAS, this the 3rd day of JANUARY, A. D. 1951.

(S.) BEN H. RICE, JR.,
United States District Judge.

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Nos. 20, 162

In the Supreme Court of the United States

OCTOBER TERM, 1951

UNITED STATES OF AMERICA, APPELLANT

v.

LOUISE VIRGINIA SMITH

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS

UNITED STATES OF AMERICA, APPELLANT

v.

ARNOLD L. DAILEY

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

BRIEF FOR THE UNITED STATES

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In the Supreme Court of the United States

OCTOBER TERM, 1951

No. 20

UNITED STATES OF AMERICA, APPELLANT

v.

LOUISE VIRGINIA SMITH

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS

No. 162

UNITED STATES OF AMERICA, APPELLANT

v.

ARNOLD L. DAILEY

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The orders of the District Court in No. 20 dismissing the indictment (R. 4-5) and denying the Government's petition for rehearing (R. 12-13)

are not reported. The memorandum opinion of the District Court in No. 162 (R. 2-3) is not reported.

JURISDICTION

In No. 20 the order of the District Court, as amended, dismissing the indictment, was entered on October 16, 1950 (R. 4-5), and the order denying the Government's petition for rehearing was entered on January 3, 1951 (R. 12-13). The United States filed its notice of appeal to this Court on February 1, 1951 (R. 13), and this Court noted probable jurisdiction on April 16, 1951 (R. 16).

In No. 162 the order of the District Court dismissing the indictment was entered on April 24, 1951 (R. 3-4). The United States filed its notice of appeal to this Court on May 24, 1951 (R. 4), and this Court noted probable jurisdiction on October 8, 1951 (R. 6).

The jurisdiction of this Court to review on direct appeals the decisions of the District Courts sustaining, prior to the attachment of jeopardy, the appellees' pleas in bar to the indictments is conferred by 18 U.S.C. 3731. See also Rules 37(a)(2) and 45 (a), F. R. Crim. P.

QUESTION PRESENTED

Whether the Wartime Suspension of Limitations Act, which suspended the "running" of any statute of limitations applicable to offenses involving fraud against the United States "until three years after the termination of hostilities"

as proclaimed by the President, is applicable to offenses of the type defined which were committed after the date of the proclamation of termination of hostilities, but within the three-year period following that date.

STATUTES AND PROCLAMATION INVOLVED

The pertinent parts of the statutes involved and Presidential Proclamation No. 2714 are set forth in the Appendix, *infra*, pp. 38-48.

STATEMENT

No. 20. On October 2, 1950, an indictment in two counts was filed in the District Court for the Western District of Texas charging the appellee Smith with having, on or about July 1, 1947, violated Section 29 of the Criminal Code (18 U.S.C. (1946 ed.) 73, now 18 U.S.C. 495, *infra*, p. 38). Count 1 charged that she falsely made and forged the name of the payee upon the back of a check drawn on the Treasurer of the United States for the purpose of obtaining the amount of the check from the Government. Count 2 charged that she uttered the check as true, knowing the indorsement to be forged, with intent to defraud the United States. (R. 2.)

The appellee moved to dismiss the indictment on the grounds that since it showed on its face that the offenses charged had been committed more than three years prior to the return of the indictment it was barred by limitations, and that

these offenses did not come within the provisions of 18 U.S.C. 3287,[1] which provides for the suspension of limitations in certain classes of cases while the United States is at war (R. 3). On October 16, 1950, the District Court granted the motion to dismiss, the order (R. 4) stating simply that the dismissal was "on the ground that more than three years has elapsed from the time of the commission of the offense as alleged in the indictment and the return of the indictment."

On November 9, 1950, the Government filed a petition for rehearing (R. 6-7), pointing out that the offenses charged in the indictment involved defrauding the United States; that under the Wartime Suspension of Limitations Act of 1942, as amended (18 U.S.C. (1946 ed.) 590a, *infra*, pp. 41-42), the running of the statute of limitations applicable to such offenses was suspended "until three years after the termination of hostilities in World War II"; that hostilities in World War II were declared terminated as of December 31, 1946, by Presidential Proclamation 2714 of that date (see *infra*, pp. 43-44); that, accordingly, the three-year statute of limitations applicable to the offenses charged did not commence to run until three years after December 31, 1946, i.e., until December 31, 1949; and that, consequently, the in-

[1] 18 U.S.C. 3287 (appearing in Supplement IV, United States Code, 1946 ed.) is, with a slight change in phraseology, the 1948 revision of the Wartime Suspension of Limitations Act of 1942, 56 Stat. 747, as amended in 1944, 58 Stat. 648, 667; *id.* 765, 781; 18 U.S.C. (1946 ed.) 590a. See, *infra*, pp. 19-21, 42-43.

dictment, which was returned on October 2, 1950, was not barred by the statute of limitations.[2] In her reply to the petition for rehearing (R. 8-10), the appellee relied on two contentions: (1) that the phrase, "When the United States is at war," in 18 U.S.C. 3287 (*infra*, p. 42, see footnote 1, *supra*, p. 4), delimits the operation of the Suspension Act to those offenses specified in that Act which were committed before the cessation of hostilities and (2) that the case of *United States* v. *Gottfried*, 165 F. 2d 360 (C.A. 2),[3] supports such construction. The Government filed a brief in answer to the appellee's reply (R. 10-11) pointing out that the Government mainly relied on the literal terms of the Suspension Act (18 U.S.C. 590a, *infra*, pp. 41-42) before the addition of the phrase, "When the United States is at war," in the 1948 revision of the Criminal Code.

The District Court denied the petition for rehearing (R. 12-13), holding that the indictment had been properly dismissed on the ground that it had been filed too late, *i.e.*, more than three years after the date of the commission of the alleged offenses. In so holding, the District Court stated (R. 16):

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[2] The petition for rehearing also pointed out that the 1942 Suspension Act was repealed by Section 21 of the Act of June 25, 1948 (the Act revising Title 18 of the United States Code; see, *infra*, p. 43), but that same Section 21 contains a saving clause with respect to "any rights or liabilities now existing under" any of the repealed laws.

[3] This case was miscited as *United States* v. *Gottlieb* by both appellee (R. 8-9) and the court below (R. 13).

> The Court is of the opinion that the Suspension Act, 18 U.S.C. 590(a), being the Act of August 24, 1942, as amended in 1944, applies only to offenses committed during the time prior to the termination of hostilities. Hostilities were proclaimed terminated as of December 31, 1946. The alleged offense is charged to have occurred July 1, 1947, and the three-year statute of limitations barred prosecution of this offense three years thereafter. " * * * The purpose of the amendment (18 U.S.C. 590(a)) was not to let crimes pass unpunished which had been committed in the hurly burly of war * * * " *United States* v. *Gottlieb*, 165 F. 2d 360, page 368.

No. 162. On September 29, 1950, an indictment (R. 1) was filed in the District Court for Colorado charging that on or about March 14, 1947, the appellee Dailey knowingly and willfully made a false and fraudulent statement in a matter within the jurisdiction of the United States Department of Agriculture in connection with his application for Farmers Home Administration services, in violation of Section 35(A) of the Criminal Code, 18 U.S.C. (1946 ed.) 80; reenacted as 18 U.S.C. (1948 rev.) 1001; *infra*, p. 39.

The appellee moved to dismiss on the ground that it appeared from the face of the indictment that the offense had been committed more than three years before the indictment was returned (R. 2). The United States opposed the motion, contending that under the Wartime Suspension

of Limitations Act the period of limitations did not commence to run until three years after the termination of hostilities as proclaimed by the President (see R. 2-3).

In granting the motion to dismiss the indictment, the District Court held that "The purpose of the Suspension Statute [18 U.S.C. (1948) 3287] was not to let crimes pass unpunished which had been committed 'when the United States is at war' ", citing *United States* v. *Gottfried*, 165 F. 2d 360 (C.A. 2); that the Suspension Act applies only to offenses committed when the United States is "at war"; and that in view of Presidential Proclamation 2714 declaring the termination of hostilities as of December 31, 1946, "the United States was *not* at war" (italics in original) in March 1947, the date of the offense alleged in the indictment, and the Suspension Act is therefore inapplicable (R. 3).

SPECIFICATION OF ERRORS RELIED UPON

In each case the District Court erred:

1. In holding that the Wartime Suspension of Limitations Act applies only to offenses committed prior to the declaration of termination of hostilities on December 31, 1946.

2. In granting the motion to dismiss the indictment.

SUMMARY OF ARGUMENT

The offenses here involved are of the type defined in the Wartime Suspension of Limitations

Act, and the sole issue for adjudication, therefore, is whether that act, which suspends the running of applicable statutes of limitations "until three years after the termination of hostilities," was operative as to offenses committed during the three-year period following the close of hostilities.

I

I. At the time of the commission of the offenses charged in the indictments (July 1 and March 14, 1947, respectively), the Suspension Act of August 24, 1942, as amended in 1944, was in effect. That act in plain and unambiguous language provided that the "running" of applicable statutes of limitations in cases of the type here involved "shall be suspended until three years after the termination of hostilities in the present war." This language makes no distinction between offenses committed before, and offenses committed after, the termination of hostilities, and no such distinction can be found therein by implication. The Suspension Act was enacted with congressional recognition that frauds against the Government would flourish during the post-hostility period when the economy of the nation would be reconverted from a war to a peace basis. Comparable legislation enacted after the close of hostilities in World War I was a precedent for the World War II suspension legislation.

In the Contract Settlement Act of 1944 Congress amended the original 1942 Suspension Act by substituting "until three years after the termination of hostilities in the present war" for "until June 30, 1945." At the same time the Suspension Act was made applicable to the offenses proscribed by the Contract Settlement Act. Since the offenses defined by the latter act were of a type likely to be committed, for the most part, during the post-hostilities period, it is not conceivable that Congress would have made the Suspension Act applicable to such offenses had it intended that act to be operative only during the period of hostilities. The same is true of the Surplus Property Act of 1944, which was enacted a few months after the Contract Settlement Act and which further amended the Suspension Act to include offenses under the Surplus Property Act.

2. The reliance by the appellee in No. 20 and by the District Court in No. 162 upon the language, "When the United States is at war," which was added to the revised version of the Suspension Act in the 1948 revision of the Criminal Code (18 U.S.C. 3287), is misplaced. The 1948 Act repealed the existing Suspension Act, but Section 21 of the 1947 act saved "rights or liabilities now existing." Since the offenses here were committed prior to the effective date of the 1948 act, the repealed Suspension Act is still controlling in these cases.

In any event, it is immaterial which of the two enactments is applicable. If the phrase, "When

the United States is at war," was added to restrict the suspension provision to offenses committed during a state of war, the result is the same, unless the phrase is interpreted as meaning a period co-extensive with the period of actual hostilities. Such an interpretation, however, would be inconsonant with the history of the suspension statute, and would be at variance with the decisions of this Court holding that a statute which terminates at the end of "war" will, in the absence of express Congressional direction to the contrary, be held to extend to the ratification of the treaty or proclamation of peace and will not be held to terminate at the close of hostilities. Here, there is no such congressional direction.

3. The holdings of the District Courts that the Suspension Act applies only to offenses committed during the period of hostilities renders the Act entirely inapplicable to a period in respect of which the accomplishment of its purpose requires that it be given effect. One of the prime purposes of the Act was to insure the punishment of frauds perpetrated against the United States during the turbulent period following the close of hostilities, when the nation would be faced with an enormous reconversion task and when its manpower would be in a state of flux; a period that would see the final settlement of most war contracts and the disposal of the great bulk of surplus war materiel. The decisions of the District Courts limiting the operation of the statute to offenses committed during hostilities de-

stroy its vitality for carrying out this prime purpose. The statute is clear, and the need for punishing frauds against the United States is an uncompromising one. The statute should therefore be given the construction called for by its plain language and purpose.

II

The history of the Suspension Act shows that it was intended to apply to offenses committed after the close of hostilities. The framers of the original act expressly stated that it was needed so that frauds might be discovered and punished after the end of hostilities, and the act was considered and enacted wth congressional awareness that comparable legislation had been enacted to cover the post-hostility period of World War I. Also, the language, "shall be suspended until three years after the termination of hostilities in the present war," which was placed in the statute by amendment in 1944, was placed there in circumstances which plainly indicate that Congress intended the statute to be applicable during the reconversion period. Moreover, the act, as amended, was made applicable to new classes of offenses involving war contract settlements and the disposal of surplus property, matters which Congress recognized would for the most part arise after the cessation of hostilities.

ARGUMENT

The sole issue presented in these appeals is whether the Wartime Suspension of Limitations

Act operated to suspend the normal three-year statute of limitations with respect to offenses committed during the three-year period following the cessation of hostilities proclaimed by the President on December 31, 1946, i.e., the three-year period between December 31, 1946, and December 31, 1949. In the cases at bar the offenses charged in the indictments were alleged to have been committed in March 1947 (No. 162) and July 1947 (No. 20), after the termination of hostilities and within that three-year period. If the Suspension Act applies to those offenses, the normal three-year statute of limitations (R.S. 1044; now 18 U.S.C. 3282, *infra*, pp. 39-40) did not begin to run until December 31, 1949, and prosecution in September 1950 (No. 162, R. 1) and October 1950 (No. 20, R. 2) was not barred, since the three-year period would not expire until December 31, 1952. On the other hand, if the Suspension Act is not applicable to offenses committed after the cessation of hostilities, the three-year statute of limitations began to run when the alleged offenses were committed and would, of course, have barred prosecution in September and October 1950, respectively, when the indictments were returned.

It is the Government's contention that the Suspension Act suspended the running of the normal three-year statute of limitations until the expiration of three years after the cessation of hostilities, or until December 31, 1949; that the

plain and unambiguous language of the Suspension Act permits of no other reasonable construction of its terms; that such construction finds support in the legislative history of the Act; and that the decisions of the District Courts below, holding that the Act applies only to offenses committed prior to the cessation of hostilities, disregard the direct mandate of the statute and in large part defeat its purpose.[4]

I

The Suspension Statute By Its Express Terms, As to the Offenses Defined Therein, Suspended the Running of the Applicable Statutes of Limitations Until Three Years After the Cessation of Hostilities

1. *The Suspension Act prior to the 1948 revision.*—In March and July, 1947, when the offenses involved in these cases were alleged to have been committed, the Wartime Suspension of Limitations Act, as amended (56 Stat. 747; 58 Stat. 649, 667; *id.* 765, 781; 18 U.S.C. (1946 ed.) 590a, *infra*, pp. 41-42), provided in pertinent part that—

> The running of any existing statute of limitations applicable to any offense against the laws of the United States (1) involving defrauding or attempts to defraud the United

[4] Two other District Courts, in cases involving the question whether fraud was an ingredient of the offenses charged, assumed, although the point in issue here was not raised, that the Suspension Act applies to offenses committed during the three-year period following the termination of hostilities on December 31, 1946. *United States* v. *Choy Kum*, 91 F. Supp. 769, 770 (N.D. Cal.); *United States* v. *Shoso Nii*, 96 F. Supp. 971, 972 (D. Hawaii), now pending on direct appeal, No. 469, this Term.

> States or any agency thereof whether by conspiracy or not, and in any manner * * * shall be suspended until three years after the termination of hostilities in the present war as proclaimed by the President or by a concurrent resolution of the two Houses of Congress. * * *

This language makes no express distinction between offenses committed before, and offenses committed after, the proclamation of the termination of hostilities, and no such distinction can, with reason, be found therein by implication. The language is entirely devoid of any words of limitation confining its operation to offenses committed before the cessation of hostilities. On the contrary, in plain and unambiguous language its mandate is that the "running" of the applicable statute of limitations "shall be suspended until three years after the termination of hostilities in the present war."

In holding that the Suspension Act applies only to offenses committed prior to the termination of hostilities, i.e., prior to December 31, 1946, both District Courts below relied upon a dictum in *United States* v. *Gottfried*, 165 F. 2d 360, 368 (C.A. 2), that the purpose of the Act "was not to let crimes pass unpunished which had been committed in the hurly-burly of war" (No. 20, R. 13; No. 162, R. 3).[5] That statement, however, was addressed

[5] In No. 162, the District Court also relied upon the introductory phrase, "When the United States is at war," which was

solely to the wholly different problem whether fraud was an ingredient of the offenses involved in that case. Moreover, the "hurly-burly of war" may be said to be present during the post-hostility period when the nation is faced with pressing demobilization and reconversion problems which may hinder the Government in discovering and punishing frauds perpetrated during that period as much as during actual hostilities. The cessation of the so-called "shooting war" does not abate this type of fraud, for it flourishes on the turbulence incident to a rapid reconversion from war back to peace, when war contracts are finally adjusted and when huge quantities of surplus property must be equitably disposed of by the Government in a manner that will not disrupt the economy of the nation. Congressional recognition of this fact is found in comparable legislation enacted in 1921, several years after the cessation of hostilities in World War I. The Act of November 17, 1921, c. 124, 42 Stat. 220, enlarged to six years the three-year period of limitation provided in R.S. 1044 with respect to offenses involving the defrauding of the United States, and that Act, passed more than three years after the Armistice, was obviously operative only as to offenses committed after the cessation of hostilities. (See pp. 27-30, *infra*.)

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added to the Suspension Act when it was revised and enacted as permanent legislation as part of the 1948 revision of the Criminal Code. We show below (pp. 19-25) that the addition of this clause in the revision did not remove post-hostility offenses from the Suspension Act.

The language, "until three years after the termination of hostilities in the present war," first appeared in the Suspension Act of 1942 by way of an amendment to that Act contained in the Contract Settlement Act of July 1, 1944, 58 Stat. 649; 41 U.S.C. 101, *et seq.* Section 19(b) of the Contract Settlement Act amended the Suspension Act of 1942 by inserting therein the above-quoted language in lieu of the words, "until June 30, 1945,"[6] and by adding a clause (2) in the Suspension Act, which made it applicable to offenses committed in connection with the negotiation, termination, settlement, etc., of war contracts: See, *infra,* pp. 40-41. The Contract Settlement Act, which provided punishment for violations of its provisions, was plainly designed to cope with reconversion and other post-hostility problems and to enhance a return to normal business operations by the host of contractors who, during the war, had converted their establishments for the purpose of performing services in connection with the war effort. Indeed, Section 1 of that Act (58 Stat. 649) stated that two of its primary objectives were "(a) * * * to expedite reconversion from war production to civilian production as war condi-

[6] As originally enacted, the Suspension Act of August 24, 1942, *infra,* p. 40, suspended the running of applicable statutes of limitation with respect to offenses involving the defrauding of the United States "until June 30, 1945, or until such earlier time as the Congress by concurrent resolution, or the President, may designate." See, *infra,* pp. 27-37, where the history of the Suspension Act and its amendment by the Contract Settlement Act is more fully developed.

tions permit," and "(f) * * * to detect and prosecute fraud."[7] Thus, at the same time Congress passed the Contract Settlement Act with the avowed purpose that it would be effective in large measure during the reconversion period following the end of hostilities, it amended the Suspension Act not only specifically to include within the period of the suspension of the running of statutes of limitations the three-year period following the termination of hostilities, but also to make it applicable to offenses which the declared objectives of the Contract Settlement Act clearly contemplated would be highly inimical to the welfare of the nation and difficult of discovery when committed during that period.

Further evidence of the recognition by Congress that frauds against the United States, conceived and brought to fruition in the post-hostility period, would require enlarged time for discovery and punishment, is found in the Surplus Property Act of October 3, 1944, 58 Stat. 765, 781. This Act further amended the Suspension Act to make it applicable to a third group of offenses "committed in connection with the care and handling and disposal of property under the Surplus Property Act of 1944." See pp. 41-42, *infra*. It is clear that the

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[7] Section 19(a), 58 Stat. 667, 41 U.S.C. 119, making it unlawful to secrete, mutilate, obliterate or destroy certain records of war contractors within, *inter alia*, "five years after the termination of hostilities in the present war," is further evidence that Congress was concerned with frauds in the period of settlement following the end of the fighting.

Surplus Property Act was designed to reach its maximum degree of operation and effectiveness during the period following the cessation of hostilities, since there would be little likelihood that disposals of surplus property on any large scale would take place during actual hostilities.

It would have been strange for Congress, in the latter half of 1944 when the end of the fighting was in sight, to include in the Suspension Act the language, "shall be suspended until three years after the termination of hostilities in the present war," unless it intended the Act to apply to offenses committed after the close of hostilities. In the first place, the Suspension Act of 1942 had already suspended the running of the applicable statutes of limitations until June 30, 1945, so that there was little apparent need for amendment if only offenses committed during hostilities were intended to be included within the suspension. Secondly, at that late period of the war, Congress made the amendatory language applicable to offenses in connection with the administration of the Contract Settlement and Surplus Property Acts, and both of those Acts, as we have pointed out, were obviously designed to operate principally in the post-hostility period. In the circumstances, it is scarcely plausible that Congress contemplated that offenses in connection with those Acts in the period of reconversion following the close of hostilities would be of any lesser national concern than similar offenses committed before the anticipated end of the fight-

ing. Since it is clear that Congress intended the Suspension Act to apply to the newly established offenses when committed after the fighting had ended, it necessarily follows that Congress also intended it to apply to the cognate offenses involving fraud on the United States described in the original Suspension Act—offenses of the type involved here—when committed in the same period. We submit that the plain language of the Suspension Act of 1942, as amended, permits of no other reasonable construction.

2. *The Suspension Act after the 1948 revision.*—The Act of June 25, 1948, 62 Stat. 683, 862, 868, which revised the Criminal Code, repealed the Suspension Act, as amended, and, with slight changes in phraseology, reenacted its provisions into permanent law as 18 U.S.C. 3287. This section reads in pertinent part as follows:

> When the United States is at war the running of any statute of limitations applicable to any offense (1) involving fraud or attempted fraud against the United States or any agency thereof in any manner, whether by conspiracy or not, * * * shall be suspended until three years after the termination of hostilities as proclaimed by the President or by a concurrent resolution of Congress. * * *

However, Section 21 of the Act of June 25, 1948, *infra*, p. 43, provided that rights or liabilities then existing under all of the repealed laws should not be affected by the repeal.

The appellee in No. 20 and the District Court in No. 162 relied on the new introductory phrase, "When the United States is at war," in the 1948 revised version as delimiting the application of the suspension statute to those offenses which had been committed prior to twelve o'clock noon, December 31, 1946, the date upon which the President proclaimed the termination of hostilities in World War II (No. 20, R. 8-10; No. 162, R. 3). The District Court in No. 20, however, limited its consideration to the Suspension Act as it read prior to the 1948 revision. If the 1948 revision embodied a substantive change, it would seem that the policy of the prior law with respect to offenses committed before the change became effective was preserved by the saving provision in Section 21 of the 1948 Act revising the Criminal Code. Cf. *Hoiness* v. *United States*, 335 U.S. 297, fn. 6, pages 300-301.

It is the Government's position, however, that it is immaterial whether the preexisting statute or the 1948 revision is the applicable law. In the former, as we have shown, there are no words to restrict the applicability of the law to offenses committed before the termination of hostilities, and the context and scope of the 1944 amendments prove that no such limitation was intended. In the latter, the only words of limitation are those appearing in the introductory phrase, "When the United States is at war." This phrase, however, carries no implication that Congress intended any change in the operative period of the statute. On

the contrary, it indicates only that the purpose was to make definite and certain the circumstances under which the statute would begin to operate, not when it would cease to be operative. The clause, "shall be suspended until three years after the termination of hostilities," was not changed and is a plain command as to when the statute shall cease to operate. Thus, the language, "When the United States is at war," implies no intention on the part of Congress to limit the application of the suspension provision to offenses committed during hostilities.

The reviser's note [8] to §3287 of the 1948 revision explains that—

> The phrase "When the United States is at war" was inserted at the beginning of this section to make it permanent instead of temporary legislation, and to obviate the necessity of reenacting such legislation in the future. This permitted the elimination of references to dates and to the provision limiting the application of the section to transactions not fully barred. When the provisions of the War Contract Settlements Act of 1944, upon which this section is based, are considered in connection with said section 590a which it amends, it is obvious that no purpose can be served now by the provisions omitted. * * *
>
> The revised section is written in general terms as permanent legislation applicable whenever the United States is at war. * * *

[8] See note following 18 U.S.C. (1946 ed.), Supp. IV, 3287.

It is thus clear that no substantive change in the operation of the legislation was intended, except that the Act was to be permanent law to become operative in time of war.

Assuming, however, that the phrase, "When the United States is at war," was added to restrict the applicability of the suspension provision to offenses committed during the existence of a state of war, there is no difference in result, unless it is also assumed that that phrase describes a period of time co-extensive with the period of actual "hostilities." Such an interpretation would be manifestly unsound, since it would be inconsonant not only with the historical background of the suspension statute, but also with decisions of this Court holding that a state of war may continue to exist after hostilities have ended.

Hostilities in World War II were declared terminated by Presidential Proclamation 2714 of December 31, 1946, *infra*, pp. 43-44, which provides, *inter alia*:

> Although a state of war still exists, it is possible to declare * * * that hostilities have terminated.

In order to establish that Congress intended the period of "war" to be coextensive with the period of "hostilities" also mentioned in the revised provision, it is necessary to assume that Congress was not cognizant of the essential distinction between the two terms. This Court has held that in constru-

ing a statute which terminates at the "conclusion of the war," the period of war will, in the absence of specific provisions to the contrary, be held to extend to the ratification of the treaty of peace or the proclamation of peace and will not be held to end at the cessation of hostilities. *Hamilton* v. *Kentucky Distilleries Co.*, 251 U.S. 146, 164-168; *Hijo* v. *United States*, 194 U.S. 315, 323. See also, *In re Yamashita*, 327 U.S. 1, 11-12; *Kahn* v. *Anderson*, 255 U.S. 1, 9; *McElrath* v. *United States*, 102 U.S. 426, 438; *The Protector*, 12 Wall 700; *United States* v. *Anderson*, 9 Wall. 56.

This principle has been applied in recent cases rejecting claims that war powers delegated by Congress came to an end with the cessation of hostilities in World War II. Under the First War Powers Act of 1941, 55 Stat. 838, certain authority was given to the President to be exercised "only in matters relating to the conduct of the present war" and to expire six months after "the termination of the war." This Court held that under that statute a state of war still existed in 1947, and that such statutory language conferred not only the power to deal with problems of law enforcement which arose during the period of actual hostilities but also those that arose during the continuing emergency following the cessation of hostilities. *Fleming* v. *Mohawk Co.*, 331 U.S. 111, 116. In the more recent case of *Ludecke* v. *Watkins*, 335 U.S. 160, which arose under the Alien Enemy Act of 1798 (later R.S. 4067, as amended, 40 Stat. 531) granting the

President power to remove alien enemies from the United States whenever there should be a "declared war," this Court said (pp. 166-167):

> And so we reach the claim that while the President had summary power under the Act, it did not survive cessation of actual hostilities. This claim in effect nullifies the power to deport alien enemies, for such deportations are hardly practicable during the pendency of what is colloquially known as a shooting war. Nor does law lag behind common sense. War does not cease with a cease-fire order, and power to be exercised by the President such as that conferred by the Act of 1798 is a process which begins when war is declared but is not exhausted when the shooting stops.

At the time of the commission of the offenses charged in the cases at bar (March and July 1947), it is clear that the United States was still at "war" within the well established meaning of that word as used in §3287 of the 1948 revision. *Knauff* v. *Shaughnessy*, 338 U.S. 537, 546;[9] *Ludecke* v. *Watkins*, *supra*; *Woods* v. *Miller Co.*, 333 U.S. 138, 147 (opinion of Mr. Justice Jackson); *Bejeuhr* v. *Shaughnessy*, 177 F. 2d 436 (C.A. 2), certiorari denied, 338 U.S. 948. This construction would seem

[9] In the *Knauff* case, the Court was concerned with special restrictions on the entry of aliens promulgated under the Act of May 22, 1918, as amended, 40 Stat. 559, 55 Stat. 252, 22 U.S.C. 223, the introductory phrase of which is identical with the language of § 3287, *i.e.*, "When the United States is at war * * * ." See also, *Sichofsky* v. *United States*, 277 Fed. 762, 763-764 (C.A. 9).

to be particularly apposite here where there is no language in either the prior law or the revised law to show that Congress contemplated that the period of World War II would end, or had ended, with the cessation of hostilities. And in view of the fact that prior to the time Congress inserted the phrase, "When the United States is at war," in the revised law, the President had proclaimed that a state of war still existed, although hostilities had terminated, is is scarcely likely that Congress would have remained silent had it intended otherwise.

3. *The decisions below destroy a large part the vitality of the statute.*—The holdings below that the suspension statute applies only to offenses committed prior to the cessation of hostilities renders the statute entirely inoperative in a period as to which the accomplishment of its purpose requires that it be effective. The period following the end of hostilities is the period during which the nation is faced with a huge and pressing reconversion task; this period embodies the interval when the nation's manpower is in a state of flux. It is during this period that the major part of the thousands of Government wartime contractual engagements are finally adjusted and settled and enormous quantities of surplus war materiel must be disposed of. As we have shown, Congress had that period in mind when, in 1944, it enlarged the period of suspension of the running of limitations from June 30, 1945, as originally enacted in 1942, to "three years after the termination of hostilities," and at the

same time extended the suspension statute to include crimes committed in connection with the Contract Settlement and Surplus Property Acts of 1944; for it was plainly contemplated that transactions under those acts, and therefore crimes connected with such transactions, would reach their peak after the cessation of hostilities. It is difficult to conceive that Congress, while using words which plainly state the contrary, intended to limit the effective life of the Suspension Act to the period of hostilities when there would in all likelihood be few final contract settlements and when there would be little or no surplus property on hand.

Finally, the adoption of the District Courts' interpretation of the Act as applying only to offenses committed before the termination of hostilities (December 31, 1946) would result in an anomaly. Under such construction, the prosecution of an offense committed on December 31, 1946, may be instituted as late as December 31, 1952, but prosecution for one committed on the following day, January 1, 1947, must have been instituted by January 1, 1950, or is now barred. The Government's construction avoids such a result. Under it, December 31, 1952, is the deadline for instituting prosecutions for all offenses (of the types defined in the suspension statute) committed at any time between the effective date of the original statute (August 24, 1942) and December 31, 1949 (three years after the proclaimed cessation of hostilities).

We submit that the need for punishing frauds against the United States is an uncompromising one, and that since the language and objectives of the Suspension Act are so plain, they are not to be thwarted by an artificial conception that war ends with the cessation of hostilities. Cf. *United States* v. *California*, 297 U.S. 175, 186; *United States* v. *Rice*, 327 U.S. 742, 752-753.

II

The History of the Suspension Statute Shows That Congress Intended It To Apply To Offenses Committed During the Three-Year Period Following the Cessation of Hostilities

If any further support for our construction of the Suspension Act is needed, it is found in the history of wartime suspension of limitations legislation. A review of that history leaves no doubt that Congress intended the World War II legislation to apply to offenses committed after the cessation of hostilities.

During the period of hostilities in World War I there was no law suspending the running of statutes of limitation, and consequently many frauds committed against the Government during that period and during the period following the Armistice were not discovered until the statutory three-year period of limitation had almost or entirely expired. After hostilities were terminated, the Department of Justice undertook to investigate frauds against the Government which had occurred

both during and after the conclusion of hostilities, but it was not until November 17, 1921, more than three years after the Armistice on November 11, 1918, that Congress added a proviso to R.S. 1044, the general three-year limitation statute, extending to six years the period during which "offenses involving the defrauding or attempts to defraud the United States or any agency thereof" might be prosecuted. C. 124, 42 Stat. 220, *infra*, pp. 39-40. Many of these offenses grew out of contractual relations of the Government with persons and corporations engaged in the furnishing of military and naval supplies. This type of transaction required the most minute investigation in order to ascertain the exact facts, and in nearly every case a considerable period of time elapsed before facts could be gathered from the files and other sources sufficient to apprise the Department whether prosecution would be justified.[10] During the House debate, Congressman Graham, the sponsor of the bill (H.R. 8298) to extend the period of limitations from three to six years, said (61 Cong. Rec. 7060):

> Mr. Speaker and gentlemen of the House, shortly after the present Congress was convened I called the attention of the Attorney General to the fact that the statute of limitations was running on almost every kind of crime that had been committed, or that could be charged as having been committed, during

[10] See H. Rep. 365, 67th Cong., 1st sess., of the Committee on the Judiciary accompanying H.R. 8298, which was later enacted as the November 17, 1921, proviso to R.S. 1044.

the war. Section 1044 of the Criminal Code provides a period of limitation of three years on almost all offenses against the Government, such as might have been committed at any time during or since the war. As the war ended on the 11th of November, 1918, it will be seen that a great many of these crimes are already barred by the statute of limitations, the bar having been complete on the 11th of November, 1921, as to all crimes committed during the war period. As to all such crimes, no prosecution can now be had. However, in the period following the war, and in the things that grew out of the war, crimes were committed which are not yet barred, and it has been thought useful, inasmuch as the Attorney General is now investigating many of these matters, that the statute should be so extended that if there has been crime the Department of Justice may prosecute.

The 1921 proviso applied only to frauds committed after the Armistice, because by November 17, 1921, the date of its enactment, the three-year statute had already barred the prosecution of all frauds committed during actual hostilities, which had ended on November 11, 1918. It did, of course, save for prosecution a large number of frauds committed after actual hostilities had ceased and as to which the three-year statute of limitations had not yet run at the time of its passage.[11] The

[11] See, *e. g.*, *Miller* v. *United States*, 24 F. 2d 353 (C. A. 2), certiorari denied, 276 U. S. 638; *Falter* v. *United States*, 23 F. 2d 420 (C. A. 2), certiorari denied, 277 U. S. 590; *Weinhandler*

proviso was eliminated from R. S. 1044 by the Act of December 27, 1927, c. 6, 45 Stat. 51, more than nine years after hostilities in World War I had ended, when the reasons for its existence had ended. See H. Rep. No. 16, 70th Cong., 1st sess.

With the outbreak of hostilities in World War II, legislation similar to the 1921 proviso was considered by the Committees on the Judiciary of both houses of Congress. On May 29, 1941, a bill (H. R. 4916, 77th Cong., 1st sess.) was introduced in the House which provided:

> That in computing for the purpose of any statute of limitations the period within which prosecution must be brought for an offense punishable under the laws of the United States, there shall be excluded any period during which the United States is at war or any period of national emergency (including a limited emergency) proclaimed by the President. * * *

This bill did not pass, but a later bill with a similar purpose (H. R. 6484), which became the 1942 Suspension of Limitations Act, was introduced on June 1, 1942. The later bill provided "that the running of any existing statute of limitations applicable to offenses involving the defrauding or attempts to defraud the United States * * * shall be suspended for the period of the present war

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v. *United States*, 20 F. 2d 359 (C. A. 2), certiorari denied, 275 U. S. 554; *Bailey* v. *United States*, 13 F. 2d 325 (C. A. 9).

and for 6 months thereafter." The Senate substituted for the period of suspension provided by H. R. 6484 a more definite time, *i. e.*, "until June 30, 1945, or until such earlier time as the Congress by concurrent resolution, or the President, may designate," and the bill was enacted into law in that form as the Act of August 21, 1942, *infra*, p. 40. The reports of the Committees of both houses,[12] in commenting on the proposed legislation, used identical language, reading as follows:

> The purpose of the proposed legislation is to suspend any existing statutes of limitations applicable to offenses involving the defrauding or attempts to defraud the United States or any agency thereof, for the period of the present war. Contracting for the United States is done through its various agencies, including the departments and independent establishments and Government-owned and Government controlled corporations, and frauds against all of these agencies are intended to be embraced by the bill.
>
> During the World War many frauds committed against the Government were not discovered until the 3-year statute of limitations had almost expired, and as stated in the committee report hereinafter referred to, many of the alleged offenses were barred from prosecution. * * *

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[12] H. Rep. No. 2051 and S. Rep. No. 1544, 77th Cong., 2d sess.

The Committee Reports cited the history of the 1921 proviso and the committee report precedent thereto (H. Rep. 365, 67th Cong., *supra*), in order to emphasize the need for such legislation in connection with World War II, and then concluded:

> During normal times the present 3-year statute of limitations may afford the Department of Justice sufficient time to investigate, discover, and gather evidence to prosecute frauds against the Government. The United States, however, is engaged in a gigantic war program. Huge sums of money are being expended for materials and equipment in order to carry on the war successfully. Although steps have been taken to prevent and to prosecute frauds against the Government, it is recognized that in the varied dealings opportunities will no doubt be presented for unscrupulous persons to defraud the Government or some agency. These frauds may be difficult to discover as is often true of this type of offense and many of them may not come to light for some time to come. The law-enforcement branch of the Government is also busily engaged in its many duties, including the enforcement of the espionage, sabotage, and other laws.
>
> Your committee is of the opinion that action should be taken at this time to extend the limitations statute *so that frauds may be discovered and punished even after the termination of the present conflict*, and to insure that the limitations statute will not operate, under stress of the present-day events, for the pro-

tection of those who would defraud or attempt to defraud the United States. [Italics supplied.]

Since both Committee Reports state that this legislation was intended to extend the period of limitations so that "frauds may be discovered and punished even after the termination of the present conflict," Congress must have contemplated that even this legislation, passed in the early months of World War II, would be operative in the post-hostilities period. Also indicative of this intent is the fact that the framers of the 1942 Act made specific reference to the 1921 proviso and its history in recommending comparable legislation. Since the 1921 proviso enlarged the period of limitations only as to frauds committed after the termination of hostilities in World War I, it is only reasonable to conclude that Congress contemplated that the present statute would encompass, in addition to the period of actual hostilities, a period of time after the termination of hostilities during which such frauds undoubtedly would be committed against the Government as had been the case after World War I.

We have already discussed (*supra*, pp. 13-19) the significance of the amendments of the 1942 Suspension Act in the Contract Settlement and Surplus Property Acts of 1944, both of which were enacted to facilitate reconversion to a peace time economy after the cessation of the fighting in

World War II. We will only add here that the committee reports accompanying the bill (S. 1718) which became the Contract Settlement Act indicate the importance of the legislation in protecting and promoting the demobilization and reconversion process.[13] In addition, it was pointed out during the House debate on the bill that it was not until April 30, 1921, nearly two and one-half years after the Armistice ending hostilities in World War I, that practically all war-contract claims had been settled (90 Cong. Rec. 2866).

It is thus clear that Congress intended the Suspension Act, as amended in the Surplus Property Act, to function as the 1921 proviso had functioned, and that it would apply to offenses committed during the three-year period following the close of World War II hostilities, as the 1921 proviso had after the Armistice in World War I.

The same purpose is evident from the further amendment of the Suspension Act in the Surplus Property Act of 1944. That Act is entitled, "An Act to aid the reconversion from a war to a peace economy through the distribution of Government surplus property and to establish a Surplus Property Board to effectuate the same, and for other purposes." Patently, the amendment extending the Suspension Act to offenses "committed in connection with the care and handling and disposal of property under the Surplus Property Act of 1944"

[13] See H. Rep. 1590, p. 18, and S. Rep. 836, p. 1, fn. 1, 78th Cong., 2d sess.

related in the main to a period when surplus property would be distributed, i.e., after the cessation of hostilities. Thus, for the second time Congress amended the Suspension Act to make it apply to offenses which, by their very nature, would for the most part be committed during the period following the end of hostilities.[14] In its report accompanying the bill (S. 2063) which became the Surplus Property Act, the Senate Committee on Military Affairs said (S. Rep. 1057, 78th Cong., 2d Sess., p. 14):

> As was provided in the Contract Settlement Act of 1944, the statute of limitations with respect to offense against the laws of the United States arising in connection with activities under this act was suspended until 3 years after termination of hostilities in the present war. This provision has been necessitated by the magnitude of the operations involved under this act, and the intensive preoccupation of both participants and witnesses with the war effort. It is clear that the bulk of the offenses cognizable under this statute will not be apprehended or investigated until the end of the war and will then require considerable time before they advance to the stage of litigation.[15]

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[14] Section 38 (58 Stat. 765, 784) of the Surplus Property Act provided that "Unless extended by law, this Act shall expire at the end of three years following the date of the cessation of hostilities in the present war."

[15] See also the remarks of Congressman Sabath, who was in charge of the House Resolution designed to bring the Surplus Property bill to the floor of the House for consideration. In

It cannot be doubted that when the Contract Settlement Act and the Surplus Property Act were passed in 1944, Congress had the reconversion period in mind, and that it was acting with knowledge, gleaned from the experiences of World War I, that the period following the close of hostilities is rife with opportunities for the unscrupulous to defraud the Government. It is logical and proper, therefore, to conclude that Congress, in 1944, was endeavoring to afford the Government a measure of protection in connection with World War II equal to, if not greater than, that which had been provided for the period following the close of hostilities in World War I. In the circumstances, it is beyond reasonable controversy that Congress intended the Suspension Act, as amended in the two 1944 acts, to apply to offenses committed during the three-year period following the cessation of hostilities in World War II.

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pointing out to the House the importance of the Surplus Property bill, Mr. Sabath said (90 Cong. Rec. 6952):

"Mr. Speaker, I recollect regretfully the mishandling of our surplus property after the last war, both here and abroad, when some irresponsible gentlemen having authority to dispose of the surpluses played into the hands of their own former employers, which brought about prosecutions in 1921 and 1922 of some but not all of them. This situation I hope will not happen again because, as one who insisted on the prosecution of the guilty manipulators after the first war, I pledge myself to do likewise if I should obtain any information as to any malfeasance or unfair dealings on the part of those who will be entrusted with the disposition of these billions of Government surplus property."

CONCLUSION

It is respectfully submitted, therefore, that the orders of the District Courts dismissing the indictments should be reversed.

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APPENDIX

1. Section 29 of the Criminal Code, 35 Stat. 1094 (18 U.S.C. (1946 ed.) 73; now 18 U.S.C. 495):

> Whoever shall falsely make, alter, forge, or counterfeit, or cause or procure to be falsely made, altered, forged, or counterfeited, or willingly aid or assist in the false making, altering, forging, or counterfeiting, any deed, power of attorney, order, certificate, receipt, contract, or other writing, for the purpose of obtaining or receiving, or of enabling any other person, either directly or indirectly, to obtain or receive, from the United States, or any of their officers or agents, any sum of money; or whoever shall utter or publish as true, or cause to be uttered or published as true, any such false, forged, altered, or counterfeited deed, power of attorney, order, certificate, receipt, contract, or other writing, with intent to defraud the United States, knowing the same to be false, altered, forged, or counterfeited, or whoever shall transmit to, or present at, or cause or procure to be transmitted to, or presented at, any office or officer of the Government of the United States, any deed, power of attorney, order, certificate, receipt, contract, or other writing, in support of, or in relation to, any account or claim, with intent to defraud the United States, knowing the same to be false, altered, forged, or counterfeited, shall be fined not more than one thousand dollars and imprisoned not more than ten years.

2. Section 35(A) of the Criminal Code, 35 Stat. 1095, as amended (18 U.S.C. (1946 ed.) 80; now 18 U.S.C. 1001):

> Whoever shall * * * make or cause to be made any false or fraudulent statements or representations, * * * knowing the same to contain any fraudulent or fictitious statement or entry in any matter within the jurisdiction of any department or agency of the United States or of any corporation in which the United States of America is a stockholder, shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

3. Section 1044, Revised Statutes, as amended (18 U.S.C. (1946 ed.) 582; now 18 U.S. 3282):

> No person shall be prosecuted, tried, or punished for any offense, not capital, except as provided in section 1046 [crimes under revenue laws or slave trade laws], unless the indictment is found, or the information is instituted, within three years next after such offense shall have been committed: *Provided however, that in offenses involving the defrauding or attempts to defraud the United States or any agency thereof, whether by conspiracy or not, and in any manner, and now indictable under any existing statutes, the period of limitation shall be six years. This Act shall apply to acts, offenses, or transactions, where the existing statute of limitations has not yet fully run, but this proviso shall not apply to acts, offenses, or transactions*

which are already barred by the provisions of existing laws. [Italics supplied.][16]

4. Section 1 of the Wartime Suspension of Limitations Act of August 24, 1942, c. 555, 56 Stat. 747:

> the running of any existing statute of limitations applicable to offenses involving the defrauding or attempts to defraud the United States or any agency thereof, whether by conspiracy or not, and in any manner, and now indictable under any existing statutes, shall be suspended until June 30, 1945, or until such earlier time as the Congress by concurrent resolution, or the President, may designate. This Act shall apply to acts, offenses, or transactions where the existing statute of limitations has not yet fully run, but it shall not apply to acts, offenses, or transactions which are already barred by the provisions of existing laws.

5. Section 1 of the Suspension Act of August 24, 1942, as amended by Section 19(b) of the Contract Settlement Act of July 1, 1944 (c. 358, 58 Stat. 649, 667):

> Sec. 19(b). The first section of the Act of August 24, 1942 * * * is amended to read as follows:
>
> The running of any existing statute of limitations applicable to any offense against the

[16] The italicized language was placed in this section by the Act of November 17, 1921, c. 124, 42 Stat. 220. It was eliminated from the section by the Act of December 27, 1927, c. 6, 45 Stat. 51. The section without the italicized language now appears, with slight changes in phraseology, as 18 U. S. C. 3282.

laws of the United States (1) involving defrauding or attempts to defraud the United States or any agency thereof whether by conspiracy or not, and in any manner, or (2) committed in connection with the negotiation, procurement, award, performance, payment for, interim financing, cancelation or other termination or settlement, of any contract, subcontract, or purchase order which is connected with or related to the prosecution of the present war, or with any disposition of termination inventory by any war contractor or Government agency, shall be suspended until three years after the termination of hostilities in the present war as proclaimed by the President or by a concurrent resolution of the two Houses of Congress. This section shall apply to acts, offenses, or transactions where the existing statute of limitations has not yet fully run, but it shall not apply to acts, offenses, or transactions which are already barred by provisions of existing law.

6. Section 1 of the Suspension Act of August 24, 1942, as further amended by Section 28 of the Surplus Property Act of October 3, 1944 (c. 479, 58 Stat. 765, 781; 18 U.S.C. (1946 ed.) 590a):

Sec. 28. The first section of the Act of August 24, 1942 * * * as amended, is amended to read as follows:

The running of any existing statute of limitations applicable to any offense against the laws of the United States (1) involving de-

frauding or attempts to defraud the United States or any agency thereof whether by conspiracy or not, and in any manner, or (2) committed in connection with the negotiation, procurement, award, performance, payment for, interim financing, cancelation or other termination or settlement, of any contract, subcontract, or purchase order which is connected with or related to the prosecution of the present war, or with any disposition of termination inventory by any war contractor or Government agency, or (3) committed in connection with the care and handling and disposal of property under the Surplus Property Act of 1944, shall be suspended until three years after the termination of hostilities in the present war as proclaimed by the President or by a concurrent resolution of the two Houses of Congress. This section shall not apply to acts, offenses, or transactions where the existing statute of limitations has not yet fully run, but it shall not apply to acts, offenses, or transactions which are already barred by provisions of existing law.

7. 18 U. S. C. (1948 rev.) 3287:

Wartime suspension of limitations. When the United States is at war the running of any statute of limitations applicable to any offense (1) involving fraud or attempted fraud against the United States or any agency thereof in any manner, whether by conspiracy or not, or (2) committed in connection with the acquisition, care, handling, custody, control or disposition of any real or personal property of the United States, or (3) com-

mitted in connection with the negotiation, procurement, award, performance, payment for, interim financing, cancelation, or other termination or settlement, of any contract, subcontract, or purchase order which is connected with or related to the prosecution of the war, or with any disposition of termination inventory by any war contractor or Government agency, shall be suspended until three years after the termination of hostilities as proclaimed by the President or by a concurrent resolution of Congress.

Definitions of terms in section 103 of title 41 shall apply to similar terms used in this section.

8. Section 21 of the Act of June 25, 1948, revising the Criminal Code (c. 645, 62 Stat. 683, 862):

The sections or parts thereof of the Revised Statutes or Statutes at Large enumerated in the following schedule are hereby repealed. Any rights or liabilities now existing under such sections or parts thereof shall not be affected by this repeal.

[Among the enumerated sections is the Wartime Suspension of Limitations Act of August 24, 1942, as amended, *supra*.]

9. Presidential Proclamation 2714 of December 31, 1946 (61 Stat. (Pt. 2) 1048-1049; 12 F. R. 1):

A PROCLAMATION

With God's help this nation and our allies, through sacrifice and devotion, courage and perseverance, wrung final and unconditional surrender from our enemies. Thereafter, we, together with the other United Nations, set

about building a world in which justice shall replace force. With spirit, through faith, with a determination that there shall be no more wars of aggression calculated to enslave the peoples of the world and destroy their civilization, and with the guidance of Almighty Providence great gains have been made in translating military victory into permanent peace. Although a state of war still exists, it is at this time possible to declare, and I find it to be in the public interest to declare, that hostilities have terminated.

NOW, THEREFOR, I, HARRY S. TRUMAN, President of the United States of America, do hereby proclaim the cessation of hostilities of World War II, effective twelve o'clock noon, December 31, 1946.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States of America to be affixed.

DONE at the City of Washington this 31st day of December in the year of our Lord nineteen hundred and forty-six, and of the Independence of the United States of America the one hundred and seventy-first.

[SEAL.] HARRY S TRUMAN.

By the President:

JAMES F. BYRNES,
The Secretary of State.

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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 162

THE UNITED STATES OF AMERICA, APPELLANT,

vs.

ARNOLD L. DAILEY

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

FILED JULY 2, 1951.

PROBABLE JURISDICTION NOTED OCTOBER 8, 1951.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 162

THE UNITED STATES OF AMERICA, APPELLANT,

vs.

ARNOLD L. DAILEY

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

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1 [Caption omitted]

2 In the United States District Court for the District of Colorado Sitting at Denver

Criminal No. 12430

THE UNITED STATES OF AMERICA, PLAINTIFF

vs.

ARNOLD L. DAILEY, DEFENDANT

INDICTMENT—Filed September 29, 1950

The grand jury charges:

That on or about the 14th day of March, 1947, in the County of Delta, State and District of Colorado, ARNOLD L. DAILEY did knowingly and willfully make a false and fraudulent statement and representation in a matter within the jurisdiction of the United States Department of Agriculture, said matter being in connection with the defendant's application for Farmers Home Administration services; that is to say:

That on or about the 14th day of March, 1947, in the County of Delta, State and District of Colorado, the said ARNOLD L. DAILEY did make a false and fraudulent statement and representation to the United States Department of Agriculture, in which he stated that he owned 126 acres of land of the value of $10,000.00, cows, cattle, poultry, machinery, equipment and furniture of the value of $3720.00, which said statement and representation was false and fraudulent in that the said defendant, ARNOLD L. DAILEY did not own 126 acres of land of the value of $10,000.00 and cows, cattle, poultry, machinery, equipment and furniture of the value of $3720.00; all of which the said defendant, ARNOLD L. DAILEY, then and there well knew at the time he made the aforesaid false and fraudulent statement and representation.

A True Bill.

JAMES B. KENNEY,
Foreman.

MAX M. BULKELEY,
United States Attorney.

JNL:fsm

[File endorsement omitted.]

3 In United States District Court

MOTION TO DISMISS—Filed October 20, 1950

Defendant by Lennart T. Erickson, his attorney, moves this Honorable Court for an order dismissing the above entitled action upon the ground that the indictment shows on its face that the alleged false statement was made on March 14, 1947, that the indictment was filed on September 29, 1950, and that more than three years have elapsed between the time the offense was committed and the indictment made, contrary to the statute of limitations set forth in Section 3282, Title 18, U. S. C. A.

LENNART T. ERICKSON,
Attorney for Defendant,
1002 Midland Savings Bldg.,
Denver, Colorado.
TAbor 6119.

[File endorsement omitted.]

4 In United States District Court

THE UNITED STATES OF AMERICA

v.

ARNOLD L. DAILEY, DEFENDANT

Honorable Max M. Bulkeley, United States Attorney for the District of Colorado and the *Honorable Joseph N. Lilly,* Assistant United States Attorney for the District of Colorado, for the United States of America; *Lennart T. Erickson, Esquire,* 1002 Midland Savings Building, Denver, Colorado, for Defendant.

MEMORANDUM OPINION—Filed April 24, 1951

KNOUS, District Judge:

The indictment herein, found on September 29, 1950, charges that on or about March 14, 1947, the defendant did knowingly and wilfully make a false and fraudulent statement concerning his ownership of real and personal property to the Department of Agriculture, an agency of the United States, allegedly in violation of 18 U.S.C. 1001.

The defendant has moved to dismiss the indictment on the ground that the prosecution of the alleged defense is barred by the three-year Statute of Limitations. 18 U.S.C. 3282. The Government argues that the prosecution is still maintainable by reason of the

wartime Suspension of Limitations, 18 U.S.C. 3287, which provides as follows:

> "When the United States is at war the running of any statute of limitations applicable to any offense (1) involving fraud or attempted fraud against the United States or any agency thereof in any manner, whether by conspiracy or not . . . shall be suspended until three years after the termination of hostilities as proclaimed by the President or by a concurrent resolution of Congress."

5 The purpose of the Suspension Statute was not to let crimes pass unpunished which had been committed "when the United States is at war." See *United States* v. *Gottfried*, C.C.A., N.Y. 165 F. (2d) 860. However, by its terms the Suspension Statute can have no application to offenses committed at a time when the United States was not at war.

It is conceded, that by Proclamation No. 2714, 12 Federal Register 1, the President proclaimed termination of hostilities of World War II as of December 31, 1946. The offense herein involved, alleged in the indictment as having been done on or about March 14, 1947, thus was not committed until some two and one-half months *after* termination of hostilities of World War II as officially and conclusively proclaimed by the President and at a time when the United States was *not* at war. Hence, the wartime Suspension of Limitations Statute is without application here. The indictment herein was not found and returned until September 29, 1950, which was more than three years next after the alleged commission of the offense on March 14, 1947.

Accordingly, the defendant's motion to dismiss the indictment is granted and it is so ordered.

DATED at Denver, Colorado, this twenty-fourth day of April, A.D. 1951.

WILLIAM LEE KNOUS,
United States District Judge.

[File endorsement omitted.]

6 In United States District Court

ORDER GRANTING MOTION TO DISMISS INDICTMENT—Filed April 24, 1951

The motion of the defendant to dismiss the Indictment herein, having heretofore come on to be heard and having been argued by counsel and by the Court taken under advisement, and the Court being now fully advised in the premises;

It is ordered by the Court, pursuant to a Memorandum Opinion

filed herein this day, that the said motion be, and it is hereby granted.

Wherefore, it is considered by the Court that the defendant of and from the premises in this said indictment specified be discharged and go hence hereof without day.

[File endorsement omitted.]

7 In United States District Court

NOTICE OF APPEAL—Filed May 24, 1951

The United States hereby appeals to the Supreme Court of the United States from the order of the United States District Court for the District of Colorado, entered April 24, 1951, dismissing the indictment which charged the defendant with making a false and fraudulent statement in a matter within the jurisdiction of the United States Department of Agriculture, in violation of Section 35 A of the Criminal Code, 18 U. S. C. (1946 ed.) 18; reenacted as 18 U. S. C. (1948 rev.) 1001.

Dated May 24, 1951.

PHILIP B. PERLMAN,
Solicitor General,
Department of Justice,
Washington, D. C.

[File endorsement omitted.]

8 In United States District Court

[Title omitted]

CLERK'S STATEMENT OF DOCKET ENTRIES AS TO DEFENDANT, AS REQUIRED UNDER RULE 37 OF THE CRIMINAL RULES

	Date
1. Order: Grand Jury returns indictment—Warrant of arrest to issue. Bail $1000.00	Sept. 29, 1950
2. Indictment	Sept. 29, 1950
3. Praecipe—Warrant of arrest issued and to Marshal	Sept. 29, 1950
4. Order: Continued to 10/20/50	Oct. 11, 1950
5. Marshal's return W/A—executed 10/6/50	Oct. 17, 1950
6. Order: Deft. appeared—leave granted to file motion to dismiss—Deft. to be let to Bail on his personal recognizance	Oct. 20, 1950
7. Motion to Dismiss	Oct. 20, 1950

8.	Order: On motion to Dismiss—argued and taken under advisement	Mar. 30, 1951
9.	Memorandum Opinion of Judge Knous	Apr. 24, 1951
10.	Order of dismissal	Apr. 24, 1951
11.	Notice of Appeal, filed	May 24, 1951

Dated at Denver, Colorado, this 25th day of May, A.D. 1951.

Attest:

G. WALTER BOWMAN,
Clerk.

9 [Title omitted]

Notification to Appellee under Rule 12 (omitted in printing).

10 [Title omitted]

DESIGNATION OF RECORD (omitted in printing)

11 Clerk's Certificate to foregoing transcript omitted in printing.

12 In the Supreme Court of the United States, October Term, 1951

[Title omitted]

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF RECORD—Filed July 18, 1951

Pursuant to Rule 15, paragraph 9, of this Court, appellant states that it intends to rely upon the following points:

1. The District Court erred in holding that the Wartime Suspension of Limitations Act (section 1 of the Act of August 24, 1942, 56 Stat. 747, as amended by the Act of July 1, 1944, section 19(b), 58 Stat. 667, and the Act of October 3, 1944, section 28, 58 Stat. 765; revised in 1948 as permanent legislation, 18 U.S.C. 3287) applies only to offenses committed before the date of the termination of hostilities in World War II as officially proclaimed by the President, i.e., those committed before December 31, 1946.

2. The District Court erred in granting the motion to dismiss the indictment.

Appellant deems the entire record, as filed in the above-entitled case, necessary for the consideration of the points to be relied on.

PHILIP B. PERLMAN,
Solicitor General.

July 18, 1951

13 SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1951

No. 162

[Title omitted]

ORDER—October 8, 1951

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted. The case is transferred to the summary docket and assigned for argument immediately following No. 20, United States vs. Smith.

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Office Supreme Court, U. S.
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JUL 2 1951
CHARLES ELMORE CROPLEY

No. 162

In the Supreme Court of the United States

OCTOBER TERM, 1951

THE UNITED STATES OF AMERICA, APPELLANT

vs.

ARNOLD L. DAILEY

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

STATEMENT AS TO JURISDICTION

STATEMENT AS TO JURISDICTION

In compliance with Rule 37(a) (1) of the Federal Rules of Criminal Procedure and Rule 12 of the Rules of the Supreme Court of the United States, as amended, the United States submits herewith its statement particularly disclosing the basis upon which the Supreme Court has jurisdiction on appeal to review the order of the District Court in this cause dismissing the indictment.

OPINION BELOW

The opinion and order of the District Court has not been reported. A copy thereof is annexed hereto.

JURISDICTION

The order of the District Court was entered April 24, 1951. The jurisdiction of the Supreme Court to review on direct appeal the decision of the District Court sustaining, prior to the attachment of jeopardy, the defendant's plea in bar to the indictment is conferred by 18 U.S.C. 3731. See also Rules 37(a)(2) and 45(a), F.R. Crim. P. The following decisions sustain the jurisdiction of the Supreme Court: *United States* v. *Goldman*, 277 U.S. 229, 236-237; *United States* v. *Oppenheimer*, 242 U.S. 85; *United States* v. *Barber*, 219 U.S. 72, 78.

QUESTION PRESENTED

Whether the Wartime Suspension of Limitations Act, which suspended the "running" of any statute of limitations applicable to offenses involving fraud against the United States "until three years

after the termination of hostilities" as proclaimed by the President, is applicable to offenses of the type defined which were committed after the date of the proclamation of termination of hostilities, but within the three-year period following that date.

STATUTES AND PROCLAMATION INVOLVED

Section 1 of the Act of August 24, 1942, c. 555, 56 Stat. 747, as amended by the Act of July 1, 1944, c. 358, § 19(b), 58 Stat. 667 (18 U.S.C. (1946 ed.) 590a; now revised as permanent legislation, see (18 U.S.C. (1948 rev.). 3287, *infra*), commonly known as the Wartime Suspension of Limitations Act, provided in pertinent part on March 14, 1947, the date of the offenses involved herein:

> The running of any existing statute of limitations applicable to any offense against the laws of the United States (1) involving defrauding or attempts to defraud the United States or any agency thereof whether by conspiracy or not, and in any manner * * * shall be suspended until three years after the termination of hostilities in World War II as proclaimed by the President or by a concurrent resolution of the two Houses of Congress. * * *

18 U.S.C. (1948 rev.) 3287, which became effective on September 1, 1948, and hence was in effect on September 29, 1950, the date of the return of the indictment involved herein, provides in pertinent part:

> When the United States is at war the running of any statute of limitations applicable to any offense (1) involving fraud or attempted fraud against the United States or

any agency thereof in any manner, whether by conspiracy or not, * * * shall be suspended until three years after the termination of hostilities as proclaimed by the President or by a concurrent resolution of Congress.

* * * * *

Section 21 of the 1948 Act revising Title 18 of the United States Code (Act of June 25, 1948, c. 645, 62 Stat. 683, 862, 868) provides:

> The sections or parts thereof of the Revised Statutes or Statutes at Large enumerated in the following schedule are hereby repealed. Any right or liabilities now existing under such sections or parts thereof shall not be affected by this repeal.
>
> (Among the enumerated sections is the Wartime Suspension of Limitations Act of August 24, 1942, as amended, *supra*.)

Presidential Proclamation 2714 of December 31, 1946 (12 F.R. 1), provided in pertinent part:

> * * * Although a state of war still exists, it is at this time possible to declare * * * that hostilities have terminated.
>
> Now, Therefore, I, Harry S. Truman, President of the United States of America, do hereby proclaim the cessation of hostilities of World War II, effective twelve o'clock noon, December 31, 1946.

* * * * *

STATEMENT

On September 29, 1950, an indictment was filed in the District Court charging that, on March 14, 1947, defendant knowingly and willfully made a false and fraudulent statement in a matter within

the jurisdiction of the United States Department of Agriculture in connection with his application for Farmers Home Administration services, in violation of Section 35 A of the Criminal Code, 18 U.S.C. (1946 ed.) 80, reenacted as 18 U.S.C. (1948 rev.) 1001.

Defendant moved to dismiss on the ground that it appeared from the face of the indictment that the offense had been committed more than three years before the indictment was returned. The United States opposed the motion, contending that under the Wartime Suspension of Limitations Act, *supra,* the period of limitations did not commence to run until three years after the termination of hostilities as proclaimed by the President.

The District Court granted the motion, holding that the suspension statute applies only to offenses committed while the United States is at war, and not to offenses committed after December 31, 1946, the date proclaimed by the President as the date of the termination of hostilities.

THE QUESTION IS SUBSTANTIAL

The issue presented on this appeal is the same as that before the Supreme Court on the Government's direct appeal in *United States* v. *Louise Virginia Smith,* No. 630, O.T. 1950, probable jurisdiction noted April 16, 1951. As there pointed out, the question presented affects all offenses of the types defined in the suspension statute which were committed during the three-year period between December 31, 1946, and December 31, 1949. It is the Government's position that, under the literal language of the suspension statute, the period of

limitations for the specified offenses did not commence to run until three years after the termination of hostilities, so that prosecutions therefor may be instituted until December 31, 1952.

A separate appeal is necessary in this case to preserve the interests of the United States in the event the Supreme Court should hold that the statute of limitations did not commence to run until December 31, 1949.

Respectfully submitted.

PHILIP B. PERLMAN,
Solicitor General.

MAY 1951.

FILED United States District Court, Denver, Colorado, MAY 24, 1951.—G. Walter Bowman, Clerk.

Honorable Max M. Bulkeley, United States Attorney for the District of Colorado and the Honorable Joseph N. Lilly, Assistant United States Attorney for the District of Colorado, for the United States of America; Lennart T. Erickson, Esquire, 1002 Midland Savings Building, Denver, Colorado, for Defendant.

MEMORANDUM OPINION

KNOUS, District Judge.

The indictment herein, found on September 29, 1950, charges that on or about March 14, 1947, the defendant did knowingly and wilfully make a false and fraudulent statement concerning his

ownership of real and personal property to the Department of Agriculture, an agency of the United States, allegedly in violation of 18 U.S.C. 1001.

The defendant has moved to dismiss the indictment on the ground that the prosecution of the alleged defense is barred by the three-year Statute of Limitations. 18 U.S.C. 3282. The Government argues that the prosecution is still maintainable by reason of the wartime Suspension of Limitations, 18 U.S.C. 3287, which provides as follows:

> "When the United States is at war the running of any statute of limitations applicable to any offense (1) involving fraud or attempted fraud against the United States or any agency thereof in any manner, whether by conspiracy or not . . . shall be suspended until three years after the termination of hostilities as proclaimed by the President or by a concurrent resolution of Congress."

The purpose of the Suspension Statute was not to let crimes pass unpunished which had been committed "when the United States is at war." See *United States* v. *Gottfried*, C.C.A., N.Y. 165 F. (2d) 360. However, by its terms the Suspension Statute can have no application to offenses committed at a time when the United States was not at war.

It is conceded, that by Proclamation No. 2714, 12 Federal Register 1, the President proclaimed termination of hostilities of World War II as of December 31, 1946. The offense herein involved, alleged in the indictment as having been done on or about March 14, 1947, thus was not committed

until some two and one-half months *after* termination of hostilities of World War II as officially and conclusively proclaimed by the President and at a time when the United States was *not* at war. Hence, the wartime Suspension of Limitations Statute is without application here. The indictment herein was not found and returned until September 29, 1950, which was more than three years next after the alleged commission of the offense on March 14, 1947.

Accordingly, the defendant's motion to dismiss the indictment is granted and it is so ordered.

DATED at Denver, Colorado, this twenty-fourth day of April, A.D. 1951.

WILLIAM LEE KNOUS,
United States District Judge.

FILED AND ENTERED ON THE DOCKET United States District Court, Denver, Colorado, April 24, 1951.—G. Walter Bowman, Clerk.

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No. 162

In the Supreme Court of the United States

OCTOBER TERM, 1951

UNITED STATES OF AMERICA, APPELLANT

v.

ARNOLD L. DAILEY

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

REPLY BRIEF FOR THE UNITED STATES

In the Supreme Court of the United States

OCTOBER TERM, 1951

No. 162

UNITED STATES OF AMERICA, APPELLANT

v.

ARNOLD L. DAILEY

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

REPLY BRIEF FOR THE UNITED STATES

I

UNDER THE CRIMINAL APPEALS ACT ONLY THE QUESTION PASSED UPON IN THE DISTRICT COURT IS OPEN IN THIS COURT

The suspension provision here involved applies to offenses "involving fraud or attempted fraud against the United States * * *." Appellee Dailey suggests in his brief in this Court for the first time that the offense with which he is charged does not involve fraud against the United States. This point was not raised in the court below and was not the basis of decision below. We therefore do not believe that it can be considered by this Court on the Government's appeal under the Criminal Appeals Act.

978172—51——1

United States v. *Borden*, 308 U. S. 188, 193, is, we think, controlling. It held that in a case arising under the Criminal Appeals Act, "When the District Court has rested its decision upon the construction of the underlying statute this Court is not at liberty to go beyond the question of the correctness of that construction and consider other objections to the indictment. The Government's appeal does not open the whole case."

Its compelling applicability becomes clearer when the decision is considered in relation to the contentions made. The *Borden* case involved a prosecution charging combination and conspiracy in violation of Section 1 of the Sherman Anti-Trust Act. The defendants included milk distributors, a cooperative marketing association of producers, a labor union whose members were engaged in the distribution of the milk, and officers of all of these organizations. Various challenges were made to the indictment by demurrers and motions to quash. The labor union defendants contended that by virtue of certain provisions of the Clayton Act and of the Norris-LaGuardia Act, neither the union nor its officers was subject to prosecution under Section 1 of the Sherman Act. This objection was not passed upon by the District Court. It held, so far as here relevant, that the production and marketing of milk products were removed from the purview of the Sherman Act by the Agricultural Marketing Agreement Act of 1937, and that the defend-

ants cooperative marketing association of producers and its officers and agents were also exempt from prosecution under the Sherman Act by virtue of the Capper-Volstead Act. Consequently, the District Court sustained the demurrers and dismissed the indictment.

This Court held that its jurisdiction rested on that portion of the Criminal Appeals Act which permits review where a decision quashing or sustaining a demurrer to an indictment is based upon the "construction of the statute upon which the indictment is founded." It examined the correctness of the construction placed by the District Court on the Sherman Act and the effect on it of the Capper-Volstead and Agricultural Marketing Agreement Acts, and concluded that they did not preclude the prosecution under Section 1 of the Sherman Act. It then made the following holding, bearing particularly on the claim of the labor union, and on the specific problem before this Court in the instant case:

> Having dealt with the construction placed by the court below upon the Sherman Act, our jurisdiction on this appeal is exhausted. We are not at liberty to consider other objections to the indictment or questions which may arise upon the trial with respect to the merits of the charge. For it is well settled that where the District Court has based its decision on a particular construction of the underlying statute, the review here under the Criminal Appeals Act is

> confined to the question of the propriety of that construction [pp. 206–207].
>
> * * * * *
>
> Similarly, the contention of the defendants who are labor officials that the Sherman Act does not apply to labor unions or labor union activities is not open on this appeal. The District Court did not construe the Sherman Act as inapplicable to these defendants and the Government's appeal, under the restriction of the Criminal Appeals Act, does not present that question [p. 208].

Thus, this Court held that, even though the labor union raised a question of statutory construction which, had it been decided favorably to the union by the court below, could have been appealed under the Criminal Appeals Act, and which, if upheld, would have precluded prosecution of the union, the question was not open on the Government's appeal from the District Court's decision. That is the situation here.

The *Borden* case draws on a long line of cases which emphasized the limited scope of the Criminal Appeals Act in opening the record of the case in this Court. Many of them concern only a refusal by the Court to permit challenges to defects in the indictment which do not concern matters of construction. Nonetheless, the language of the Court shows what was early recognized to be effective limits of the Act.*

*In *United States* v. *Gilliland*, 312 U. S. 86, the district court dismissed an indictment under the false claims statute,

In *United States* v. *Keitel*, 211 U. S. 370, 397–399, after sustaining the District Court's construction of the statute involved, this Court said:

> Finally, we come to the two contentions of the Government which we have hitherto temporarily put aside, and to the various contentions on the part of the defendants in error, insisting either that the court below misconstrued the indictment, or that there were such defects in the indictment that it was rightly quashed, irrespective of the construction of the statutes which led the court below to do so. But we do not think we have jurisdiction on this writ of error to consider these questions. [The Criminal Appeals Act] * * * plainly shows that in giving to the United States

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section 35 (A) of the Criminal Code, on the ground that no pecuniary loss to the Government was involved. It did not pass on an additional objection that the Connally Act, by dealing comprehensively with hot oil violations, made section 35 (A) inapplicable to such violations. This Court, after reversing the district court and holding section 35 (A) applicable, also held that the Connally Act did not effect a partial repeal of that section. But reversal on the question passed on by the district court necessarily required a holding that section 35 (A) was still in force as a basis of liability. This is not inconsistent with *Borden*. The decision there that the Sherman Act was not rendered inapplicable by the Capper-Volstead and Agricultural Marketing Agreement Acts did not expressly or implicitly affect the contention that labor unions and their officials were exempt by the Clayton Act. Equally, a decision that the suspension act embraces offenses committed after December 31, 1946, does not expressly or implicitly affect the contention that the offense committed by Dailey does not involve fraud.

> the right to invoke the authority of this court by direct writ of error in the cases for which it provides contemplates vesting this court with jurisdiction only to review the particular question decided by the court below for which the statute provides. In other words, that the purpose of the statute was to give the United States the right to seek a review of decisions of the lower court concerning the subjects embraced within the clauses of the statute, and not to open here the whole case. We think this conclusion arises not only because the giving of the exceptional right to review in favor of the United States is limited by the very terms of the statute to authority to reexamine the particular decisions which the statute embraces, but also because of the whole context, which clearly indicates that the purpose was to confine the right given to a review of the decisions enumerated in the statute, leaving all other questions to be controlled by the general mode of procedure governing the same. . . . .

In *United States* v. *Kissel*, 218 U. S. 601, decided very shortly after the *Keitel* case, Mr. Justice Holmes, for the Court, made it clear that the narrow scope of review on appeal was not affected by the fact that the appeal arose out of the granting of a plea in bar. This, of course, is the nature of the order in the case now before the Court. *Kissel* was an anti-trust case in which

the District Court had sustained a plea of the statute of limitations. At pages 606–607, the Court said:

> * * * the only question before us * * * is whether the plea in bar can be sustained. That this court is confined to a consideration of the grounds of decision mentioned in the statute when an indictment is quashed was decided in *United States* v. *Keitel*, 211 U. S. 370, 399. We think that there is a similar limit when the case comes up under the other clause of the act, from a "judgment sustaining a special plea in bar, when the defendant has not been put in jeopardy." This being so, we are not concerned with the technical sufficiency or redundancy of the indictment, or even, in the view that we presently shall express, with any consideration of the nature of the overt acts alleged.

Similar holdings and language may be found in *United States* v. *Miller*, 223 U. S. 599; *United States* v. *Carter*, 231 U. S. 492, 493; *United States* v. *Moist*, 231 U. S. 701; *United States* v. *Colgate & Co.*, 250 U. S. 300; *United States* v. *Shrader's Sons*, 252 U. S. 85, 98; *United States* v. *Yuginovich*, 256 U. S. 450, 461. And see, more recently, *United States* v. *Hastings*, 296 U. S. 188, 192:

> * * * the construction of the indictment and its sufficiency merely as a pleading, as distinguished from the construction

> of the statute, are questions for the District Court. We must accept the construction of the indictment as that court gives it. And where that court has rested its decision upon the invalidity or construction of the statute which underlies the indictment, this Court will not go beyond those grounds and consider other objections to the indictment. * * *

The propriety of giving this limited scope to the act has received fairly recent approval in a concurring opinion of Mr. Justice Frankfurter. In *United States* v. *Petrillo*, 332 U. S. 1, 14, he stated:

> The case is here under the Criminal Appeals Act of 1907, 34 Stat. 1246, as amended by the Act of May 9, 1942, 56 Stat. 271, * * * whereby a direct review can be had of a district court judgment setting aside an indictment or information if the decision of the district court is based "upon the invalidity or construction of the statute upon which the indictment or information is founded." Our decisions have construed this to mean that review can be had here only if a district court's decision was based exclusively upon the invalidity or construction of a statute. A criminal case cannot be reviewed here if questions of criminal pleading—defects not arising from the statute under consideration—enter into a decision sought to be reviewed. * * * If both the sufficiency of criminal pleading and the validity or construc-

> tion of the underlying statute were in issue before the District Court, and views as to both were interwoven in the court's decision, this Court has no jurisdiction to entertain the appeal. * * * On the other hand, if the question of constitutional construction was the isolated ground of decision by a district court dismissing a federal prosecution, that is the only question to be considered here and it must be considered within the scope given it by the district court. Other questions may be imbedded in the case which may eventually come to the surface. But they are not brought to the surface here under the limited, specific review given by the Criminal Appeals Act. It is to such implicit questions of pleading, and to statutory or constitutional questions not passed upon by a district court, that Mr. Chief Justice Hughes had reference when he said, "The Government's appeal does not open the whole case." *United States* v. *Borden* * * *.

Thus, we think that under the holdings and language of this Court, the issue of fraud sought to be raised by Dailey is not properly subject to consideration on an appeal under the Criminal Appeals Act.[1]

[1] The general rule, on which appellee relies, that an appellee may support a judgment on any ground apparent of record is not in point here because of the narrow scope of review under the Criminal Appeals Act.

II

THE CRIME CHARGED INVOLVED FRAUD ON THE UNITED STATES WITHIN THE MEANING OF THE SUSPENSION PROVISION

Assuming that appellee has standing to raise the question as to whether the offense charged involves fraud within the meaning of the suspension statute, the judgment of the district court should nevertheless be reversed. The statute suspends the running of limitations for "any offense against the laws of the United States (1) involving defrauding or attempts to defraud the United States or any agency thereof whether by conspiracy or not, and in any manner * * *." The indictment is laid under former Section 35A of the Criminal Code, 18 U. S. C. (1946 ed.) 80 (reenacted as 18 U. S. C. 1001), which punishes one who "knowingly and willfully" makes a "false or fraudulent" statement in "any matter within the jurisdiction of any department or agency of the United States." Specifically, the indictment charges that appellee knowingly and willfully made a false and fraudulent statement as to his assets in a matter within the jurisdiction of the Department of Agriculture, i. e., "in connection with the defendant's application for Farmers Home Administration services" (R. 1). A mere reading of the indictment, we submit, makes it clear that it charges an offense involving "defrauding the United States * * * in any

manner," within the meaning of the suspension statute.

Appellee argues that to be within the purview of the suspension statute the offense charged must be laid under a statute which (1) by definition makes intent to defraud the United States an element of the offense, and (2) requires proof of pecuniary loss to the United States. Nothing in the language or the legislative history of the suspension provision, however, supports this construction. On the contrary, they show that the suspension provision should be construed broadly to encompass frauds against the Government, however they may arise, and that no technical mechanical concepts were intended to limit its scope.

A. *The language of the suspension provision indicates that it should be broadly construed.*— The language of the statute indicates its broad intent. The use of the word "involving" in connection with fraud suggests that the fraud element of the offense is not to be measured with precision, but that some relationship between the offense and fraud will suffice. The provision refers to "any offense." It refers to offenses involving defrauding the United States "whether by conspiracy or not" and "in any manner." This, again, is language of generality. It indicates a specific congressional purpose not to have

the basic aims of this legislation thwarted by technical construction.[2]

The language is inconsistent with a purpose to include only limited kinds of fraud, or to include frauds which arise only under neatly drawn provisions saying, in so many words, "This involves fraud." The language used indicates recognition that the kind of conduct with which the provision deals is not subject to precise moulding. To deny broad application of this provision is to deny effectiveness to a common and useful legislative technique for signaling to courts that the proper touchstone for particular construction problems is liberality.

Aside from these internal evidences of broad purpose, we must ascribe logic to the provision. The singling out of cases involving fraud for suspension of the statute of limitations obviously stems from the fact that fraud may not be discovered until a considerable time after the offense has been committed. That factor is involved whether the spoils be cash or privileges; the impairment of government functions is as effective. There is no logic to drafting a statute which is concerned with protecting the Government against the effects of deceptive behavior, and then limit-

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[2] The absence of the words "for any purpose" as in the general conspiracy provision does not, we submit, justify appellee's contention that the otherwise general words which were used acquire suddenly a narrower meaning than they normally bear.

ing it to those cases where the deception causes the Government pecuniary or proprietary losses, or to those where the fraud is neatly spelled out. Such an approach ignores the underlying policy against deceits.

B. *The legislative history of the Suspension Act also indicates that it should be broadly construed.*—The legislative materials relating to the Suspension Act emphasize, we submit, the correctness of our view of the statute, and demonstrate that Congress had Section 35A specifically in mind when it legislated on this question. The statute was initially enacted as the Act of August 24, 1942, 56 Stat. 747, and provided—

> * * * That the running of any existing statute of limitations applicable to offenses involving the defrauding or attempts to defraud the United States or any agency thereof, whether by conspiracy or not, and in any manner, and now indictable under any existing statutes, shall be suspended until June 30, 1945, or until such earlier time as the Congress by concurrent resolution, or the President, may designate. * * *

Its purpose was to suspend the running of the statutes of limitation applicable to offenses involving the defrauding of the Government. As the Committee Reports[8] state, experience during the first World War showed that many offenses involving fraud on the Government were barred

[8] H. Rep. No. 2051 and S. Rep. No. 1544, 77th Cong., 2d sess.

because they had not been discovered within time to prosecute during the three year period of limitations.[4] In the words of both Committee Reports—

> During normal times the present 3-year statute of limitations may afford the Department of Justice sufficient time to investigate, discover, and gather evidence to prosecute frauds against the Government. The United States, however, is engaged in a gigantic war program. Huge sums of money are being expended for materials and equipment in order to carry on the war successfully. Although steps have been taken to prevent and to prosecute frauds against the Government, it is recognized that in the varied dealings opportunities will no doubt be presented for unscrupulous persons to defraud the Government or some agency. These frauds may be difficult to discover as is often true of this type of offense and many of them may not come to light for some time to come. The law-enforcement branch of the Government is also busily engaged in its many duties, including the enforcement of the espionage, sabotage, and other laws.
>
> Your committee is of the opinion that action should be taken at this time to ex-

[4] In 1921 a proviso was added to the three year statute of limitations extending the period to six years for offenses involving fraud on the Government. Act of November 17, 1921, 42 Stat. 220. The extension was repealed in 1927. Act of December 27, 1927, 45 Stat. 51.

tend the limitations statute so that frauds may be discovered and punished even after the termination of the present conflict, and to insure that the limitations statute will not operate, under stress of present-day events, for the protection of those who would defraud or attempt to defraud the United States.

While these reports make evident that Congress was concerned with frauds arising out of the armament program, its recognition that the law enforcement branch of the Government was too busily engaged in other duties to be able to uncover many hidden frauds suggests that the statute was intended to cover, not only pecuniary fraud, but also any attempt to defraud the United States in any manner.

The 1942 Act was first amended by the Contract Settlement Act of 1944, which provided in Section 19, the enforcement provision, as follows (58 Stat. 649, 667):

> (b) The first section of the Act of August 24, 1942 (56 Stat. 747; title 18, U. S. C. Supp. II, sec. 590a), is amended to read as follows:
>
> "The running of any existing statute of limitations applicable to any offense against the laws of the United States (1) involving defrauding or attempts to defraud the United States or any agency thereof whether by conspiracy or not, and in any manner, or (2) committed in connection

with the negotiation, procurement, award, performance, payment for, interim financing, cancelation or other termination or settlement, of any contract, subcontract, or purchase order which is connected with or related to the prosecution of the present war, or with any disposition of termination inventory by any war contractor or Government agency, shall be suspended until three years after the termination of hostilities in the present war as proclaimed by the President or by a concurrent resolution of the two Houses of Congress. This section shall apply to acts, offenses, or transactions where the existing statute of limitations has not yet fully run, but it shall not apply to acts, offenses, or transactions which are already barred by provisions of existing law."

House Report 1590, 78th Cong., 2d Sess., p. 28, explained this provision as follows:

> Subsection (b) amends the Act of August 24, 1942 (56 Stat. 747). This amendment suspends until 3 years after the termination of hostilities the running of any existing statute of limitations applicable to any Federal offense involving fraud, against the United States or connected with the negotiation, procurement, award, performance, payment for interim financing, cancelation or other termination, or settlement of any war contract.

The suspension of limitations provision was further broadened in the Surplus Property Act

of 1944, 58 Stat. 765, 781, to include any offense committed in connection with the care and handling and disposal of property under that act.

These amendments in no way show an intention to restrict the meaning of the word "fraud" in the first clause. As to contract settlement and surplus property offenses, Congress suspended the statute of limitations even though fraud may not be involved. Thus, in these limited fields, the statute is suspended although the crimes may not be hidden. These amendments indicate congressional recognition that, because of the hugeness of the programs involved, law enforcement agencies might be unable to handle even open and notorious crimes. They thus tend to confirm our view of the suspension provision as designed to give law enforcement agencies more time to uncover and prosecute crime because of the congressional recognition that such agencies were preoccupied with matters more directly arising out of the war.

That Congress, in using the term "fraud" was not construing it in any narrow sense is shown by Section 19 (d) of the Contract Settlement Act of 1944, enacted at the same time as the suspension provision embodied in 19 (b). Section 19 (d) provided (58 Stat. at 668):

> (d) The provisions of section 35–A of the Criminal Code (18 U. S. C., sec. 80) shall apply to any statement, representation, bill, receipt, voucher, roll, account,

> claim, certificate, affidavit, or deposition made or used or caused to be made or used for any purpose under this Act or under any regulations pursuant to this Act.

Of this subsection, H. Rep. 1590, 78th Cong., 2d sess., stated (p. 28):

> Subsection (d) deals with the criminal penalties for fraud. It makes clear that the provisions of section 35–A of the Criminal Code (18 U. S. C., sec. 80) also apply to any such statement, representation, or other document made or used or caused to be made or used for any purpose under the act. Section 35–A imposes criminal penalties up to 10 years' imprisonment for fraudulent actions involving the Government.

This label of fraud was attached to crimes under the False Claims Act at the very time when the provisions of the suspension act, suspending limitations on crimes involving fraud, were before Congress. It indicates clearly that Congress did not think of fraud in any restricted, technical sense, and specifically that Congress deemed prosecutions under Section 35–A within the purview of the Suspension Act.

C. *An offense under the False Claims Act is an offense involving the defrauding of the United States.*—Appellee's argument that the suspension act applies only to statutes where by definition intent to defraud the United States is made an element of the offense stems from the decision of

this Court in *United States* v. *Noveck*, 271 U. S. 201. This Court there held that the proviso attached to the statute of limitations in 1921,[5] the language of which is similar to that of the present suspension provision, did not apply to an indictment for perjury, even though that perjury was in regard to income tax due, because the "purpose to defraud the United States is not an element of the crime defined in § 125, on which the indictment is based" (p. 203).

The Court observed (271 U. S. at 204) that the purpose of the proviso was "to apply the six year period to every case in which defrauding or an attempt to defraud the United States is an ingredient under the statute defining the offense. There are several such offenses. Section 37 affords an illustration.[6] But perjury as defined by § 125 does not contain any such element."

We may assume for present purposes that, under the *Noveck* decision, fraud against the

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[5] R. S. 1044, as amended, 18 U. S. C. [1946 ed.] 582, which read as follows:

"No person shall be prosecuted, tried, or punished for any offense, not capital, except as provided in section 1046, unless the indictment is found, or the information is instituted, within three years next after such offense shall have been committed: *Provided, however*, That in offenses involving the defrauding or attempts to defraud the United States or any agency thereof, whether by conspiracy or not, and in any manner, and now indictable under any existing statutes, the period of limitation shall be six years. * * *"

[6] This is the general conspiracy section, now § 371 of the Criminal Code.

United States must be an "ingredient" under the statute defining the crime. Fraud against the United States must thus be factually relevant to the proof of the crime. But this does not necessarily mean that the statute must spell out intent to defraud the United States as an element of the statutory definition. The *Noveck* decision is consistent with the position that if, under the statute involved, the elements which must be proved necessarily establish fraud against the United States, then fraud is "involved".

Noveck was indicted under the general perjury statute which does not distinguish between those falsehoods which involve the United States and those which do not. For example, perjury in the course of private litigation will not directly affect the interests of the United States, pecuniary or otherwise. Fraud on the United States is thus not an essential element of the crime of perjury as defined by the statute.

The False Claims Act, on the other hand, applies only to false claims against or statements to the United States. Those statements must be knowingly and willfully false or fraudulent. Any knowingly false claim or statement must *ipso facto* be an interference with the proper functioning of a government agency and thus *ipso facto* an interference with the proper functioning of the government of the United States. It thus must necessarily result in the defrauding of the United States.

It is significant that in the *Noveck* case this Court referred to the general conspiracy statute as an example of the type of statute which made fraud an ingredient of the offense. For many years before that decision, this Court had made it plain that a conspiracy to defraud the Government includes, not only causing it pecuniary loss, but also interfering by deception or trickery with the lawful functioning of any department of the Government. *Haas* v. *Henkel,* 216 U. S. 462, 479–480, and cases cited; *Hammerschmidt* v. *United States,* 265 U. S. 182, 188. The making of a false and fraudulent statement to a department of the Government is such an interference with the lawful functioning of that department. See *United States* v. *Gilliland,* 312 U. S. 86, 93. Moreover, as we have noted above, Congress at the time it extended the suspension provision in the Contract Settlement Act, specifically referred to crimes under Section 35A as crimes involving fraud.

Appellee's reliance on *United States* v. *Scharton,* 285 U. S. 518, and *United States* v. *McElvain,* 272 U. S. 633, is misplaced. Those decisions turned on the fact that the cases involved offenses under the internal revenue laws, which carried their own separate limitations provisions. In the *McElvain* case, the Court held that the 1921 proviso could not extend to a conspiracy to defraud the United States by attempting to violate the internal revenue laws, because the basic statute

of limitations, to which the proviso was attached, did not operate on internal revenue violations. In the *Scharton* case, the Court was construing the special internal revenue limitations statute, which contained a proviso similar to the 1921 general proviso. Since criminal violations of the internal revenue laws usually involve fraud against the United States, the Court found it necessary to distinguish between those internal revenue statutes which made intent to defraud a definitional element of the offense and those which did not. The artificial distinction thus drawn was shortly corrected by amendment of the provision, *Braverman* v. *United States*, 317 U. S. 49, 54–55.[7] It cannot be assumed that in carrying over the language of the general 1921 proviso in the World War II suspension act, Congress intended to adopt a judicial construction based on the special situation arising under the internal revenue laws which Congress had immediately corrected.

Moreover, in both the *McElvain* and *Scharton* cases, the Court noted that it was construing the provisos narrowly precisely because they were provisos. The Wartime Suspension of Limitations Act here involved was separately enacted to forward a general policy. This very placement, as opposed to its earlier placement as an adden-

[7] Committee reports on the amendment specifically referred to the *Scharton* case. See H. Rept. 1492, 72d Cong., 1st sess. (1932), p. 29.

dum to the basic limitations provision, suggests that it should be more broadly construed.

The World War II suspension provision was specifically held to apply to an indictment under the False Claims Act in *United States* v. *Gottfried*, 165 F. 2d 360 (C. A. 2), certiorari denied, 333 U. S. 860. There the defendants had filed a false statement with the Office of Price Administration as to their 1941 sugar consumption in order to get a larger 1942 allocation. The court adverted to the definition of fraud in conspiracy cases as including any conduct calculated to obstruct or impair the efficiency of the United States or destroy the value of its operations or reports. It then observed that it saw no reason for reading the words "defrauding the United States" in the suspension provision any less broadly. It obviously appreciated that under both statutes, the range of possibilities for defeating the aims of Government was wide, and that both had a similarly broad purpose, however different their technique, to aid the Government to protect itself in an essentially indefinable area.[8]

D. *The fraud involved need not be pecuniary fraud.*—The points already made as to the lan-

[8] The *Gottfried* case was in many ways an application of an earlier Second Circuit case, *Miller* v. *United States*, 24 F. 2d 353, certiorari denied, 276 U. S. 638, where the words "involving fraud" in the 1921 proviso were held to apply to a conspiracy to defraud the United States by depriving it of the impartial services of its employees. It there appeared that defendant in conspiracy with the then Alien Property Cus-

guage, legislative history, and judicial construction of the suspension provision, have in large part already answered appellee's contention that fraud for the purpose of the suspension provision must involve pecuniary fraud on the United States.

Certainly the language of the provision draws no such distinction. Nor, as we have shown, does the legislative history support such a view. On the contrary, the legislative history indicates that Congress thought of offenses under Section 35A without distinction as offenses involving fraud on the United States.

Appellee seeks support for his position in *United States* v. *Cohn*, 270 U. S. 339, where the Court in dealing with Section 35 of the Criminal Code, as if read at that time, said (pp. 346–347) that fraud in its "primary" meaning meant "cheating the Government out of property or money" and that only the secondary meaning encompassed "interfering with or obstructing one

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todian and the then Attorney General had arranged to have an improper claim of some six and one-half million dollars allowed out of the funds under the control of the custodian. The indictment was framed under the provisions of the general conspiracy statute, and the court in holding it not barred by the statute of limitations, observed that the word "fraud" was used comprehensively in both provisions.

See also *Weinhandler* v. *United States*, 20 F. 2d 359 (C. A. 2), certiorari denied, 275 U. S. 554, where an indictment for embezzlement was held to be subject to the 1921 proviso on the ground that the word embezzlement itself implied fraudulent conduct.

of its lawful governmental functions by deceitful and fraudulent means." The Court was there dealing with Section 35 before its amendment in a case in which the party acutally cheated was not the United States but the consignor of goods.* The Court emphasized that the word "defrauding" was used in that statute "in connection with the words 'cheating or swindling,' indicating that it is to be construed in the manner in which those words are ordinarily used, as relating to the fraudulent causing of pecuniary or property loss," a meaning further emphasized "by other provisions of the section in which the word 'defraud' is used in reference to the obtaining of money or other property from the Government by false claims, vouchers and the like; and by the context of the entire section, which deals with the wrongful obtaining of money and other property of the Government, with no reference to the impairment or obstruction of its governmental functions."

Before the present suspension provision was passed, however, Section 35 had been amended

*In the *Cohn* case, goods had been shipped to the United States under a bill of lading. The bank to which the bill had been sent was instructed not to surrender it until defendant had made certain payments. Without having made the payments, defendant represented to the United States customs officials that the bill was delayed, posted bond for its production, and took the goods. The party who was "cheated" in a proprietary sense was the consignor of the goods, not the United States.

to its present form and this Court in *United States* v. *Gilliland*, 312 U. S. 86, refused to apply to the amended statute the narrow concept of fraud it had applied in the *Cohn* case. It noted that the language indicating the limitation it had earlier enforced had been changed. It observed (p. 93) that "The amendment indicated the congressional intent to protect the authorized functions of governmental departments and agencies from the perversion which might result from the deceptive practices described. We see no reason why this apparent intention should be frustrated by construction."

The only case which supports the proposition that a pecuniary or proprietary loss to the United States is a prerequisite to the application of the suspension provision is *Marzani* v. *United States*, 168 F. 2d 133 (C. A. D. C.), affirmed by an equally divided Court, 335 U. S. 895, and reaffirmed by an equally divided Court on reargument, 336 U. S. 922.[10] That case held the suspension provision inapplicable to a prosecution under the False Claims Act for false swearing in investigations of the

[10] It should be noted that this conclusion affected only certain counts underlying the general sentence imposed on Marzani, with the result that the Government was not in a position directly to petition for certiorari on this issue. The issue was not raised by Marzani's petition but was argued by the Government in support of the judgment below. In the absence of an opinion, we do not know whether this Court considered that the Government had standing to raise the issue.

defendant's fitness for federal employment, on the ground that the offenses involved no pecuniary loss to the United States.

The *Marzani* opinion based its conclusion on the *Noveck*, *McElvain* and *Scharton* decisions, discussed *supra*, but none of those cases lend support to the holding that fraud under the suspension provision means pecuniary loss. As noted above, those decisions discuss the necessity that fraud be an ingredient of the crime, but not that the fraud ingredient be pecuniary. There was no occasion for such discussion in the *McElvain* and *Scharton* cases, since the evasion of taxes there charged necessarily involved a pecuniary loss to the United States. And the *Noveck* decision, as we have hitherto pointed out, specifically mentioned the general conspiracy statute as an example of an offense where fraud is an ingredient of the crime. By so doing, it negatived the pecuniary loss requirement, since it was well established, prior to the *Noveck* case, that a conspiracy to defraud covered interference with governmental functions. *Haas* v. *Henkel*, 216 U. S. 462, 479–480, and cases cited.

Petitioner's argument, based on the *Marzani* case, is effectively answered by Judge Learned Hand's opinion in *United States* v. *Gottfried*, 165 F. 2d 360, 368, certiorari denied, 333 U. S. 860, as follows:

> * * * The argument—drawn from the Congressional debates—is that this lan-

guage should be confined to frauds of those who contracted with the United States or supplied it with materials, and that it does not include interference even though fraudulent which results in no pecuniary loss. Textually this reasoning has nothing to commend it, except so far as the word "fraud," may imply pecuniary loss; and, whatever might be said as a new matter for so circumscribing that word, it has been the law, at least since 1910, that in the statute under which this indictment was drawn, "fraud" includes any conduct, "calculated to obstruct or impair its" (the United States') "efficiency and destroy the value of its operations and reports." We see no reason for reading the words, "defrauding the United States" in the statute of limitations now in question less comprehensively; certainly there was not enough ground for that in the debates of Congress. Besides, the purpose of the amendment was not to let crimes pass unpunished which had been committed in the hurly-burly of war, an overriding motive which perfectly fits the situation at bar."

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[11] The *Gottfried* view was adopted in *United States* v. *Bridges*, 86 F. Supp. 922, 926 (N. D. Cal.), now on appeal in the Ninth Circuit.

United States v. *Obermeier*, 186 F. 2d 243 (C. A. 2), certiorari denied, 340 U. S. 951, a later decision of the Second Circuit, shows a narrowing view by that circuit of the fraud ingredient requirement as applied to a statute where fraud is less clearly spelled out than in the False Claims Act involved in *Gottfried* and the instant case, but does not at all affect the force of the *Gottfried* decision on the pecuniary loss requirement.

We submit that this is clearly the correct view; that the language and legislative history of the suspension statute and decisions of this Court all establish that crimes under the False Claims Act are crimes involving fraud under the suspension provision.

Respectfully submitted.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 162

UNITED STATES OF AMERICA,

Appellant,

v.

ARNOLD L. DAILEY

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

BRIEF FOR THE APPELLEE

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 162

UNITED STATES OF AMERICA,

Appellant,

v.

ARNOLD L. DAILEY

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

BRIEF FOR THE APPELLEE

Opinions Below

The Memorandum Opinion of the District Court was filed on April 24, 1951 (R. 2) and the order dismissing the indictment was filed on the same day (R. 3-4). Neither is reported.

Jurisdiction

The order of the District Court dismissing the indictment was entered April 24, 1951 (R. 3-4). Notice of Appeal was filed by the United States on May 24, 1951 (R. 4). Probable

jurisdiction was noted by this Court on October 8, 1951 (R. 6). The jurisdiction of this Court to review on direct appeals the decisions of the District Courts sustaining, prior to the attachment of jeopardy, the appellees' pleas in bar to the indictments is conferred by 18 U.S.C. 3731. See also Rules 37(a)(2) and 45(a), F.R. Crim. P.

Questions Presented

1. Whether the statute suspending the running of statutes of limitations applicable to offenses involving fraud against the United States "until three years after the termination of hostilities," as proclaimed by the President applies to offenses committed after the date of proclaimed termination of hostilities and within the three year period following the date thereof.

2. Whether an offense under Section 1001 of the United States Code involves as an essential ingredient such fraud as is within the contemplation of the Suspension Act staying the running of statutes of limitations applicable to offenses "involving fraud against the United States."

Summary of Argument

The indictment in the present case charges appellee with the commission of an offense under Section 1001, United States Code (1948 Rev.). The crime is alleged to have been committed on March 14, 1947. As the indictment was not returned until September, 1950 the offense is barred by the statute of limitations unless suspended by the Act of June 25, 1948, 18 U.S.C., § 3287. It is appellees contention that the latter statute did not suspend the running of the statute of limitations in the present case for the reasons that (1) the crime was committed after the President's proclamation of the termination of hostilities and (2) the substantive offense charged does not involve as an essential ingredient fraud within the contemplation of the Suspension Statute.

I

It is appellees contention that Section 3287, of Title 18, United States Code, operates to suspend the statute of limitations in offenses committed prior to the date of termination of hostilities as proclaimed by the President. The statute applies only "when the United States is at war" and suspends the running of any period of limitations until three years after the termination of hostilities. Properly interpreted, an offense committed after the close of hostilities does not fall within either the language of the statute or within its purpose. As reflected by the legislative history of the suspension statutes leading up to the Act of 1948, which under the rule set forth in *United States* v. *Obermeier*, 186 F. (2d) 243 (2nd Cir.), is the statute applicable in the present case, Congress intended to toll the running of any applicable statutes of limitations in fraud cases until, and only until, the proclamation of termination of hostilities, for throughout the Congressional reports the period of the war is considered co-extensive with the period of hostilities. The purpose of the legislation was to save the right of the Government to prosecute fraud cases "until the end of the war." Using the term in its limited sense, Congress made the termination of hostilities as proclaimed by the President, the decisive and critical date thereof.

II

Section 1001 of Title 18 (1948 Rev.) United States Code making it a crime for one to knowingly and wilfully make a false or fraudulent statement within the jurisdiction of any agency of the United States does not involve, as an essential ingredient of the crime, an intent to defraud the United States. Consequently under well-settled principles enunciated by this Court in cases involving statutes enacted in 1921 and 1926 which in terms were practically identical

with the present Wartime Suspension of Limitations Act, such an offense does not fall within the definition of "fraud" as used in the suspension statute. *Noveck* v. *United States*, 271 U. S. 201; *United States* v. *Scharton*, 285 U. S. 518.

To fall within the definition of fraud as used in the suspension statute, it is necessary that the statute defining the offense requires as an essential ingredient an intent to defraud the United States in a pecuniary manner. Section 1001 of Title 18, United States Code, involves neither an intent to defraud or a pecuniary loss.

Although the District Court did not bottom its decision in dismissing the indictment on the ground that the offense did not involve fraud within the contemplation of the Suspension Act, there being no indication whether such point was raised below, this Court has the power, and appellee has the right to urge, affirmance on this ground.

ARGUMENT I

The Wartime Suspension of Limitation Act Does Not Toll the Running of the Statute If the Offense Was Committed After Cessation of Hostilities.

The offense in the present case was allegedly committed on March 14, 1947. The indictment was returned on September 29, 1950, more than three years after the date of the offense. It is clear that the offense is barred by the statute of limitations (18 U.S.C. §3282) unless the running of such statute has been suspended under the provisions of Section 3287 of Title 18, United States Code. This section, adopted by the Act of June 25, 1948, 62 Stat. 828, provides, insofar as pertinent, as follows:

> "When the United States is at war the running of any statute of limitations applicable to any offense (1) involving fraud or attempted fraud against the United States or any agency thereof in any manner, whether

by conspiracy or not, * * * shall be suspended until three years after the termination of hostilities as proclaimed by the President or by a concurrent resolution of Congress."

The lower court held that this suspension statute was not applicable on the ground that the offense alleged "was not committed until some two and one-half months *after* termination of hostilities of World War II as officially and conclusively proclaimed by the President and at a time when the United States was *not* at war" (Tr. 2, 3).

As appears from the Government's brief, hostilities in World War II were declared to be terminated on December 31, 1946 by Presidential Proclamation 2714 (App. pp. 43-44 Gov't. Brief). The question therefore is whether on March 14, 1947 the United States was at war within the meaning of the Act of June 25, 1948.

In the brief filed on behalf of the United States, it is urged that as the crime in the present case was alleged to have been committed in 1947, the Suspension of Limitations Act of 1942, as amended (56 Stat. 747; 58 Stat. 649, 667; 58 Stat. 765, 781; 18 U.S.C. (1946 ed.) 59 (a)), is to be applied, rather than the Act of June 25, 1948 (Sec. 3282, Title 18), although that act was repealed in 1948. To substantiate this contention the Government relies on Section 21 of the Act of June 25, 1948, 62 Stat. 862, which provides that "any rights or liabilities" then existing under the repealed laws (one of which was the Suspension of Limitations Act, as amended) should not be affected by the repeal.

It is submitted, however, that this contention is without merit. It has been fully answered contrary to the Government's position in the case of *United States* v. *Obermeier*, 186 F. 2d 243 (2d Cir.), *cert. denied* 340 U. S. 951. There the Circuit Court of Appeals for the Second Circuit considered the effect of the saving clause (Sec. 21) contained in the Act of June 25, 1948 upon existing statutes of limita-

tions. After a careful and detailed analysis of existing cases the court held that the words "right or liabilities now existing" relate only to *substantive* "rights" and "liabilities" and therefore did not save statutes of limitations, as such statutes affect the "remedy" only and are considered no part of a "right" or "liability." In the words of Judge Frank, if Congress had a contrary intention "it would have been so easy to have said so."[1] Consequently, repeal without an effective saving provision constitutes a legislative pardon or amnesty. *United States* v. *Chambers*, 291 U. S. 217, 223; *Yeaton* v. *United States*, 5 Cranch. 281, 283; *Maryland* v. *B. & O. Railroad Co.*, 3 How. 534.

The only statute of limitations therefore which can be in any manner held applicable in the present case is that found in Section 3287, Title 18, United States Code, rather than the earlier statute. See *Falter* v. *United States*, 23 F. (2d) 420 (2d Cir.). It is necessary to determine therefore the meaning of the words "when the United States is at war" as used in the 1948 statute. In so doing it must be borne in mind that statutes tolling a statute of limitations must be strictly construed in favor of a defendant. *United States* v. *McElvain*, 272 U. S. 633; *United States* v. *Scharton*, 285 U. S. 518.

Phrases such as "when the United States is at war," "during war," "termination of war" and the like are words having no definite or fixed meaning. See VI HACKWORTH, DIGEST OF INTERNATIONAL LAW (State Department) § 590.[2]

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[1] Without burdening this Court with an analysis of the applicable decisions which are fully set forth in the Court's opinion in the *Obermeier* case, appellee believes it necessary only to cite a few of such decisions. See *Great Northern Railway Co.* v. *U. S.*, 208 U.S. 452; *Hertz* v. *Woodman*, 218 U.S. 205, 218; *Hallowell* v. *Commons*, 239 U.S. 506.

[2] Historically, war has been said to be terminable and to end in one of three ways: (1) by a simple cessation of hostilities; (2) by conquest of one belligerent by another; (3) by treaty of peace. See *Taylor, International Public Law*, § 580.

Concededly, this Court has held on numerous occasions that for purposes of the exercise of the war powers this country is deemed to be at war until a treaty of peace has been ratified in accordance with law. *Hamilton* v. *Kentucky Distilleries Co.*, 251 U. S. 146, 164-168; *Hijo* v. *United States*, 194 U. S. 315, 323; *Ludecke* v. *Watkins*, 335 U. S. 160. In other instances and for other purposes it has been held by various courts that the words in question relate only to the period prior to termination of hostilities. See Note (1947) 47 Col. L. Rev. 255, 267, and cases there cited. It has been observed that the distinction in particular cases rests on the type of statute or problem involved; thus, for example, where a determination that a war is over affects only a few, courts are more ready to find the end of war to exist. *Ibid.*[3] It is of interest to note that four Justices of this Court in the case of *Ludecke* v. *Watkins, supra*, stated in May of 1948 that it was but a fiction to say that this country was at that time at war with Germany. (See dissent of Justices Black, Douglas, Murphy and Rutledge).

Looking to the statute in question, the critical date is the proclaimed termination of hostilities, and for purposes of determining the applicability of the Suspension Act it would serve no purpose, and accomplish nothing, as will appear hereinafter, to construe the words "at war" in their broadest sense, rather than strictly, as we are required to do, to

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[3] Congress itself has on numerous occasions determined, for particular legislation, that World War II has been terminated. In the War Brides Act (59 Stat. 659, 8 U.S.C. Sec. 232-236) the period of the war is stated to be from December 7, 1941 to "proclaimed termination of hostilities." By joint resolution of Congress of July 25, 1947, 60 Stat. 451, termination of the war for purposes of the Servicemens' Readjustment Act of 1944, 58 Stat. 291, 38 U.S.C. Sec. 694 (a) (h), as well as the provisions of Chapter 12 of Title 38 United States Code, pertaining to veterans' education benefits, was declared to be on June 25, 1947.

Upon the issuance of the President's proclamation terminating hostilities on December 31, 1946, fifty-one wartime statutes automatically came to an end. For a list of these statutes see *New York Times*, January 1, 1947, page 22, columns 1-8.

include offenses committed after the proclamation by the President on December 31, 1946, which itself was not made until more than fifteen months after the shooting war had stopped.[4]

It is difficult to attach significance to the words "when the United States is at war" unless it is read in light of and is defined by the words "termination of hostilities as proclaimed by the President." To bring a case within the Suspension Act both war and hostilities must exist, for although a technical state of war may exist—as it does today, five years after cessation of hostilities—it is the period of hostilities which was intended to be the critical time calling for the suspension of limitations.

The purpose of the suspension statute is clear. Its need was obvious in time of armed conflict. With law enforcement officials preoccupied with strict enforcement of security measures and with contracting and other agencies of the Government concerned with prosecuting the actual war to a successful conclusion, additional time was necessary to allow the Department of Justice to discover, investigate and bring to prosecution criminal fraud cases committed while the conflict was in progress. After the cessation of actual hostilities such need created by the hurly-burly of war was no longer present. The date of termination of hostilities Congress left to the sound judgment of the Chief Executive to be exercised by him at such time as he deemed propitious.

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[4] French, *The End of the War*, 15 G.W. L. Rev. 191, 194: "The official events of World War II are as follows: On May 7, 1945, unconditional surrender terms were signed by the military leaders of Germany. On August 14, 1945 the Japanese Government announced that it accepted our terms and on September 2, 1945 the formal documents were signed on the deck of the U.S.S. Missouri. On August 16, 1945, the President issued a proclamation calling on the people to give thanks for the victory won. The proclamation related how the war lords of Japan had surrendered, how a global victory had been won. No mention was made of the end of the war or of hostilities. On August 18, 1945 the President issued Executive Order No. 9599 for the guidance of the war agencies."

The determination of that fact by him, it is submitted, constitutes the end of the war for purposes of the statute here involved.[5]

Although the Government relies upon legislative history of the suspension of limitations statutes in supporting its interpretation, such legislative history in fact substantiates the construction contended for by appellee. Looking to such history as it is set forth in the Government's brief (pp. 27 et seq.) it is apparent that throughout the Congressional reports and debates the words "when the United States is at war" were intended to mean a period prior to termination of hostilities.

In connection with the original Act of August 24, 1942, 56 Stat. 747, the reports of the committees of both Houses of Congress[6] cited the history of the 1921 Act extending the statute of limitations after World War I to six years (42 Stat. 220). In connection with the 1921 Act, Congressman Graham of Illinois, the sponsor of the bill (H. R. 8298) made the following statement on the floor of the House:

> "Mr. Speaker and gentlemen of the House, shortly after the present Congress was convened I called the attention of the Attorney General to the fact that the statute of limitations was running on almost every kind

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[5] It is believed significant that although the shooting in World War II had ceased by August, 1945, termination of hostilities was not proclaimed until the last day of December, 1946, a period of more than 16 months. This indicates a determination that all danger of renewed hostilities was at an end and that the pressure of carrying on the tremendous war program had been lifted. Apart from the fact that to the average citizen the war terminated in 1945 when the shooting stopped, the President waited to make the same official, thereby extending the applicability of existing legislation, such as the Suspension Act, during the post-hostility period when the country was demobilizing and reconverting from war to peace. During this actual "post-hostility" period and prior to the proclamation on December 31, 1946 the Suspension Act was in effect and obviously covered any crimes committed during such post-hostility period.

[6] House Report No. 2051 and Senate Report No. 1544, 77th Congress, 2d Sess.

of crime that had been committed, or that could be charged as having been committed, during the war. Section 1044 of the Criminal Code provides a period of limitation of three years on almost all offenses against the Government, *such as might have been committed at any time during or since the war. As the war ended on the 11th of November, 1918*, it will be seen that a great many of these crimes are already barred by the statute of limitations, the bar having been complete on the 11th of November, 1921, as to all crimes committed during the war period. As to all such crimes, no prosecution can now be had. However, *in the period following the war*, and in the things that grew out of the war, crimes were committed which are not yet barred, and it has been thought useful, inasmuch as the Attorney General is now investigating many of these matters, that the statute should be so extended that if there has been crime the Department of Justice may prosecute." (Ital. supplied.)

When it is remembered that although the treaty of peace in World War I was not ratified until November, 1921 and yet Congress was informed that, for purposes of prosecution of crimes committed *during the war*, the sponsors of legislation extending the period of limitations considered that war to have been terminated on November 11, 1918, and that such historical reference is included in the very reports of the Congress which adopted the present legislation, it is difficult to come to a conclusion other than, for purposes of this legislation, the period of the "war" is coterminous with the period of hostilities.

This conclusion finds further support in the Report of the Senate Committee on Military Affairs accompanying the bill which became the Surplus Property Act of 1944 (S. 2065), in which it was stated with respect to the limitation period, as follows:

"As was provided in the Contract Settlement Act of 1944, the statute of limitations with respect to offense

against the laws of the United States arising in connection with activities under this act was suspended until 3 years after termination of hostilities in the present war. This provision has been necessitated by the magnitude of the operations involved under this act, and the intensive preoccupation of both participants and witnesses with the war effort. *It is clear that the bulk of the offenses cognizable under this statute will not be apprehended or investigated until the end of the war* and will then require considerable time before they advance to the stage of litigation.[7] (Ital. supplied.)

Significantly, the Surplus Property Act, Section 38 (58 Stat. 784) provided for the expiration of the Act "at the end of three years following the date of the cessation of hostilities in the present war." This fact considered with the excerpt from the Report set forth above again supports appellee's contention.

Furthermore, nowhere in the legislative history does there appear any intent upon the part of Congress to suspend the statutes of limitations in connection with offenses committed after the termination of hostilities. On the contrary that which does appear affirmatively supports appellee's interpretation. Thus in the reports accompanying H. R. 6484,[8] the committees stated as follows:

> "During normal times the present 3-year statute of limitations may afford the Department of Justice sufficient time to investigate, discover, and gather evidence to prosecute frauds against the Government. The United States, however, is engaged in a gigantic war program. Huge sums of money are being expended for materials and equipment in order to carry on the war successfully. Although steps have been taken to prevent and to prosecute frauds against the Government, it is recognized that in the varied dealings opportunities will no doubt be presented for unscrupulous persons to

[7] S. Rep. 1057, 78 Cong. 2d Sess. p. 14.
[8] H. Rep. No. 2051 and S. Rep. No. 1544, 77th Cong. 2d Sess.

defraud the Government or some agency. These frauds may be difficult to discover as is often true of this type of offense and many of them may not come to light for some time to come. The law enforcement branch of the Government is also busily engaged in its many duties, including the enforcement of the espionage, sabotage, and other laws.

"Your committee is of the opinion that action should be taken at this time to extend the limitations statute *so that frauds may be discovered and punished even after the termination of the present conflict, and to insure that the limitations statute will not operate, under stress of the present-day events,* for the protection of those who would defraud or attempt to defraud the United States. (Italics supplied.)

Likewise in the report accompanying the Surplus Property Act of 1944, *supra*, the committee stated as a reason for the necessity for suspending the period of limitations that the bulk of the offenses covered by the Act "will not be *apprehended* or *investigated* until the end of the war, and will then require considerable time before they advance to the stage of litigation."

From the foregoing it is crystal clear that what Congress was concerned with was providing a period of time for the *apprehension* and *investigation* of crimes committed *during hostilities,* and not crimes committed thereafter, for nowhere in the legislative history does Congress speak in terms of anything other than its concern with the apprehension and investigation of crimes during hostilities when the law enforcement branch of the Government was otherwise preoccupied with enforcement of security laws such as espionage and sabotage. There was no purpose in extending the period of limitations for crimes committed after the termination of the actual conflict and at the conclusion of the "gigantic War program."

The Government takes the position that as the suspension

of the statute of limitations was contained in the Contract Settlement Act of July 1, 1944 (58 Stat. 649) and in the Surplus Property Act of October 3, 1944 (58 Stat. 765) and as these Acts were enacted when the end of the war was in sight and had for their purposes the regulation of activities following the termination of hostilities and during the period of converting to a peacetime economy, that, therefore, offenses committed after the termination of hostilities must have been intended to be included. The Government's contention in this respect is untenable. In the first place, it is difficult to follow the statement that in 1944 the end of the war was in sight. In the second place, the stated objectives of the acts establish the contrary. Thus, in the Contract Settlement Act of 1944[9] the very first objective is stated to be the facilitation of maximum war production, and in the Surplus Property Act[10] the first stated objective is to assure the most effective use of surplus property for war purposes and the common defense.

As is indicated in the legislative history of the Contract Settlement Act, problems with respect to termination of war contracts in the very midst of the war, with adverse affect on the war effort, was one of the reasons for adopting the legislation.[11]

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[9] 41 U.S.C. § 101.

[10] 50 U.S.C. App. § 1611.

[11] Senate Report No. 836 to accompany S. 1718, 78th Cong. 2d Sess.:

"The great need for legislation in the field of contract termination has been emphasized repeatedly by the heads of the Government agencies concerned, as well as by industry and labor groups which have felt the effects of contract termination. The present procedure of contract termination is cumbersome and results in unnecessary delays injurious to our economy. In the event of wholesale termination in the course of the war, this procedure would, in the option of this committee, dangerously impede expeditious conversion to the peacetime economy."

House Report 1590, to accompany S. 1718, 78th Cong. 2d Sess.:

"See what happened in the Brewster case. Thirteen thousand workers were suddenly catapulted out of their jobs by a summary

It is respectfully submitted that giving due weight to the legislative history of the suspension of limitations statutes, and applying a rule of strict construction, in accordance with the pronouncement of this Court, Section 3287 of Title 18, United States Code, must be afforded the interpretation given to it by the lower court, and its judgment should be affirmed.[12]

ARGUMENT II

The Suspension Statute Does Not Apply in a Case Where, as Here, the Intent to Defraud Is Not an Essential Ingredient of the Statute Defining the Offense.

Although the trial court dismissed the indictment on the ground that the statute of limitations had run against the offense, expressly holding that the Suspension Act did not toll the statute because the crime was committed after the

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cancellation of contracts for the manufacture of planes. No notices of cancellation were given. On the eve of invasion, the facilities and manpower of the Brewster plant remain idle. Unless drastic steps are taken, we have the disturbing spectacle of a waste we can ill afford. The Navy Department, apparently, did not consider the use of the plant for other war work despite the fact that Donald Nelson, Chairman of the War Production Board, urges greater war production as April records fall below March."

[12] The Government argues (p. 26) that if the lower court's construction is adopted an anomaly will result in that the prosecution of an offense committed on December 31, 1946 may be instituted as late as December 31, 1952 but prosecution for one committed on the following day, January 1, 1947, must have been instituted by January 1, 1950 or be barred. Such argument begs the question. Its fallacy is demonstrated by the following: The Suspension Act is effective only "when the United States is at war." War in its broadest sense terminates when a treaty of peace is ratified. Assuming that such interpretation applies in this case and a treaty of peace had been signed on June 1, 1948. Adopting the Government's construction, the period of limitations for a crime committed on May 31, 1948 would not expire until December 31, 1952. A crime committed on June 2, 1948, on the other hand, would be barred from prosecution on June 1, 1951, eighteen months sooner than in the case of a crime committed two days before. Such a possibility would have been equally anomalous. The fact that a treaty of peace was not in fact ratified does not render the situation, except in retrospect, different.

cessation of hostilities. A second and equally, if not more, important ground upon which the lower court's decision can be sustained, is that the Suspension Act does not apply to the type of offense here involved.

It is well-established that an appellee has the right to urge, and this Court has the power to consider, grounds for affirmance of a judgment apparent of record, although not raised below. *Langnes* v. *Green*, 282 U. S. 531, 538-539; *Oklahoma* v. *Civil Service Comm.*, 330 U. S. 127, 134 Note 3; *LeTulle* v. *Scofield*, 308 U. S. 415, 421.

The statute under which appellee was indicted (*Sec. 35(A) of the Criminal Code*, 35 Stat. 1095, as amended, 18 U. S. C. 1001 (formerly 18 U. S. C. Sec. 80)) provides as follows:

> "Whoever shall * * * make or cause to be made any false or fraudulent statements or representations, * * * knowing the same to contain any fraudulent or fictitious statement or entry in any matter within the jurisdiction of any department or agency of the United States or of any corporation in which the United States of America is a stockholder, shall be fined not more than $10,000 or imprisoned not more than ten years, or both."

The indictment in the present case charges the offense in the exact language of the statute in that the appellee "did knowingly and willfully make a false and fraudulent statement and representation in a matter within the jurisdiction of the United States Department of Agriculture" (Tr. 1).

The Wartime Suspension of Limitations Act, (62 Stat. 828, 18 U. S. C. (1948 Rev.) § 3287) which was in effect on the date of appellee's indictment, provides insofar as applicable, as follows:

> "When the United States is at war the running of any statute of limitations applicable to any offense (1) involving fraud or attempted fraud against the United

States or any agency thereof in any manner, whether by conspiracy or not, * * * shall be suspended * * *."

In the case at bar the question is raised for the first time in this Court as to whether or not the normal three year statute of limitations is tolled by the first clause of 18 U. S. C. Sec. 3287 in a prosecution under 18 U. S. C. Sec. 1001 which involves only the making of false and fraudulent misrepresentations on matters within the jurisdiction of government agencies, where neither purpose to defraud the United States nor pecuniary loss to the United States is an ingredient of the offense and is not alleged.

To determine this question it is necessary to first decide whether the words "offenses involving fraud or attempted fraud against the United States, or any agency thereof in any manner, whether by conspiracy or not," as used in 18 U. S. C. § 3287, included within their scope a charge that appellee "did make a false and fraudulent statement * * * which said statement and representation was false and fraudulent."

It is respectfully submitted that the legislative history and applicable decisions of this Court, and other courts, determine the issue here involved favorably to the appellee. The pertinent language of the first clause of the Suspension Act, 18 U.S.C. § 3287, "involving fraud or attempted fraud against the United States or any agency thereof in any manner, whether by conspiracy or not" derives originally from the first clause of the Suspension Act of August 24, 1942, 56 Stat. 747. This language was originally found in a proviso to 18 U. S. C. Sec. 582, enacted November 17, 1921, in connection with war frauds arising out of the first World War (42 Stat. 220, repealed by Act of December 27, 1927, 45 Stat. 51). The 1921 proviso reads:

"Provided, however, that in offenses involving the defrauding or attempts to defraud the United States

or any agency thereof, whether by conspiracy or not, and in any manner, and now indictable under any existing statutes, the period of limitation shall be six years. * * *"

This proviso was construed by this Court in *United States* v. *Noveck*, 271 U. S. 201, and in *United States* v. *McElvain*, 272 U. S. 633.

In *United States* v. *Noveck*, *supra*, the question was whether the 1921 proviso applied to perjury in an income tax return. The indictment alleged that the perjury was "for the purpose of defrauding the United States." This Court held that the six year statute did not apply, because defrauding the United States is not an element of the crime of perjury.

In *United States* v. *McElvain*, *supra*, this Court held that the six year statute of limitations involved in the *Noveck* case did not apply to a conspiracy to defraud the United States by making a false income tax return.

United States v. *Scharton*, 285 U. S. 518, further supports appellee's contention. In that case the defendant was indicted for an attempt to evade taxes by falsely understating his income. To the indictment the defendant pleaded the statute of limitations. The United States contended that attempts to obstruct or defeat the lawful functions of any department of the government, if accompanied by dishonest methods, are attempts to defraud the United States, within the meaning of the Revenue Act of 1926, 44 Stat. 114; United States Code Supp. V, Title 18, Sec. 585, which was identical with the 1921 provision. This Court held, however, that the six year limitation applicable to offenses involving the defrauding of the United States did not apply to the offense charged. In so holding Mr. Justice Roberts, speaking for a unanimous Court, said:

"* * *. as the section has to do with statutory crimes, it is to be liberally interpreted in favor of repose, and

ought not to be extended by construction to embrace so-called frauds not so denominated by the statutes creating offenses * * * The purpose of the proviso is to apply the six year period to cases 'in which defrauding or an attempt to defraud the United States is an ingredient under the statute defining the offense.'"

Since Congress, in enacting the Wartime Suspension of Limitations Act of August 24, 1942, as amended, employed the essential language of the 1921 and 1926 provisos, it is presumed, under well-established rules of statutory construction, that it adopted the construction of that language given by the Supreme Court in cases involving the 1921 and 1926 provisos. *Apex Hosiery Company* v. *Leader*, 310 U. S. 469, 488, 489; *United States* v. *Ryan*, 284 U. S. 167, 175.

The interpretation of the Suspension Act, here contended for, finds direct support in the case of *Marzani* v. *United States*, 83 U. S. App. D. C. 78, 168 F. 2d 133, affirmed without opinion, 335 U. S. 895. In that case the United States Court of Appeals for the District of Columbia held that an indictment charging the defendant with having made a false and fraudulent statement in a matter within the jurisdiction of an agency of the United States (the same charge under which appellee in this case was indicted) did not fall within the Wartime Suspension of Limitations Act. After a review of the decisions of this Court, Judge Prettyman stated as follows:

"It necessarily follows, in our view, that the Suspension Act does not apply to offenses under the False Claims Act. The Supreme Court has clearly said (1) that a statute identical in pertinent part with the Suspension Act does not apply to offenses of which defrauding the United States in a pecuniary way is not an essential ingredient; and (2) that such defrauding of the United States is not an essential ingredient of offenses under the False Claims statute. If perjury on

an official document required to be filed under a federal statute, the making of false income tax returns and an attempt to evade taxes are not defrauding the United States within the meaning of a statute of limitations, we do not see how making a false statement in the course of an inquiry into one's qualifications for federal employment can be.

"The contention of the Government is that the *Gilliland* case, supra, [312 U. S. 86] merely held that an intention to swindle or defraud the Government, resulting in property or pecuniary loss, is not an element of proof under the False Claims Act; and that the Act retained, after its amendment, 'all its essential fraud characteristics', that 'the conception of fraud against the United States formerly expressed in the statute' was retained by the 1934 amendment. It says that a false statement made in a matter within the jurisdiction of an agency of the United States 'necessarily involves a fraud'. The gist of the Government's contention is stated thus:

"'However, where an offense violative of the second clause involves 'knowingly and willfully' making 'false and fraudulent statements,' the statute (recognizing the intrinsically wilful and fraudulent element in the very nature of the acts proscribed) does not require the government to establish proof of (a) intent to defraud, or (b) pecuniary or property loss to the United States. Hence, the essential fraud elements continue as a constant in Section 80, [Title 18, U.S.C.] although the accidental language has changed insofar as 'intent of cheating and swindling or defrauding' found in the Act of October 23, 1918, may have varied the form rather than the substance of the offense.'

"The difficulty with the foregoing contention is that it ignores the plain rulings in *Noveck* and kindred cases. Those cases involved false statements, under oath. The offenses tended to obstruct, by dishonest means, the operation of a department of the Government. The Court held that the Suspension Act (actually an identical predecessor) does not apply to such

offenses. So that even if the False Claims Act does involve the sort of fraud the Government says it does, the Suspension Act does not apply; the rulings in the *Noveck* and similiar cases related to precisely that same sort of fraud. * * * "

In *United States* v. *Obermeier*, 186 F. 2d 243 (2d Cir.), the Suspension Act as it now reads, was held, by Judge Frank, speaking for the Circuit Court of Appeals for the Second Circuit, to suspend a statute of limitations "only when fraud or attempted fraud against the United States (or one of its agencies) 'is an ingredient under the statute defining the offense' and does not, absent a statutory definition, apply to perjury or false swearing, even when the United States is directly interested."

It is respectfully submitted that the Suspension Act applies only where both the intent to defraud and pecuniary or property loss to the United States are essential ingredients under the statute defining the offense.

With respect to the intent to defraud as an essential ingredient, the opinions of this Court in *United States* v. *Noveck*, *United States* v. *McElvain* and *United States* v. *Scharton*, set forth above, are decisive. This Court in these cases has rejected the contention that fraud or the intent to defraud is implicit in such crimes as perjury and wilfull attempt to defraud the payment of a tax by false returns. In these cases, this Court has held that statutes extending statutes of limitations in cases involving fraud will not be allowed to be used to create new classes of crimes involving fraud, unless clearly so intended and it has refused to find such an intent in the provisos of 1921 and 1926. On the contrary, this Court has ruled that such provisos, which in terms are identical with the Suspension Act here involved, are not to be extended by construction to embrace frauds

not so designated by the statutes creating the substantive offenses.[13]

The statute under which appellee was indicted (18 U.S.C. 1001 (1948 Rev.)) provides that anyone who, within the jurisdiction of any Government department, makes any false or fraudulent statement or representation knowing the same to contain any false or fraudulent statement, shall be punished. Intent to defraud is neither set forth nor can the same be implied. This is apparent, it is submitted, from a reading of the very next section of the United States Code (Sec. 1002) which makes it a crime for one "knowingly and with intent to defraud the United States, or any agency thereof [to] possesses any false * * * writing * * * for the purpose of enabling another to obtain money from the United States." See also, 18 U.S.C. § 1003: "Whoever knowingly and fraudulently demands etc."

Section 1001 of Title 18, United States Code, is derived from the second clause of Section 80 of Title 18, as amended in 1934, 48 Stat. 996. The legislative history of the 1934 amendment to Section 80 shows that while Congress first sought to include the words "with intent to defraud" and later to retain "defrauding" as an essential element in the offense, the amendment as finally enacted (and as it now appears in Sec. 1001) rejected this attempt and framed the statute on a different basis. This legislative history is

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[13] Where the intent to defraud was an essential ingredient of the crime charged the six-year period of limitations contained in the provisos have been held applicable. For example, see *Bailey* v. *United States*, 13 F. 2d 325 (9th Cir.) wherein the court held that defrauding the United States was a statutory ingredient of the offense of uttering forged endorsements to a government check with intent to defraud. In *Weinhandler* v. *United States*, 20 F. 2d 359 (2nd Cir.) fraud was held to be an essential element of the crime of embezzlement. See also *Falter* v. *United States*, 23 F. 2d 420 (2nd Cir.) (Cert. denied 277 U.S. 590). In each of these cases, it should be noted, there was not only involved as an essential ingredient of the crime, the intent to defraud the United States, but also the element of pecuniary loss to the United States.

summarized in *United States* v. *Gilliland*, 312 U. S. 86, 93-4, where the application of the second clause of Section 80 was sustained as to an indictment charging false and fraudulent statements in a matter within the jurisdiction of a department of the United States, where no with "intent to defraud" was alleged.[14] In this respect the following language of the court is pertinent:

> "The amendment eliminated the words 'cheating and swindling' and broadened the provisions so as to leave no adequate basis for the limited construction which had previously obtained. The statute was made to embrace false and fraudulent statements or representations when these were knowingly and wilfully used in documents or affidavits 'in any matter within the jurisdiction of any department or agency of the United States.' In this, there was no restriction to cases involving pecuniary or property loss to the government. The amendment indicated the congressional intent to protect the authorized functions of governmental departments and agencies from the perversion which might result from the deceptive practices described . . .
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> "Legislation had been sought by the Secretary of the Interior to aid the enforcement of laws relating to the functions of the Department of the Interior and, in particular, to the enforcement of regulations under Sec. 9 (c) of the National Industrial Recovery Act of (June 16) 1933 with respect to the transportation of 'hot oil.' The Secretary's effort was due, as he stated, to the lack

[14] The *Gilliland* case, it should be noted, did not involve the question of extending the period of limitations, did not construe the word "defrauding" as used in the 1921 or 1926 provisos and did not refer to the *Noveck* and *Scharton* cases. It had nothing to do with the interpretation of any statute suspending or extending a statute of limitations. The only issue with which the court was concerned related to a proper interpretation of the second clause of Sec. 80, Title 18, United States Code, as amended, in which as appears from the text above, the term "defraud" does not appear. It cannot be urged, therefore, that the *Gilliland* case in any way affects or limits the rule established by this Court in the *Noveck* and *Scharton* cases.

of a law under which prosecutions might be had (for the presentation of false papers.' The bill which was passed by Congress, however, was amended in its final status so as to require 'intent to defraud the United States.[15] This bill was returned by the President without his approval for the reason that the offense as defined was covered by existing law which provided for more severe punishment than that proposed by the bill. 78 Congressional Record, pt, 6 p 6778 (73rd Cong. 2nd ses.) Another measure was then proposed by the Secretary of the Interior which would obviate these objections and accomplish the purpose of reaching the presentation of false papers in relation to 'hot oil'. A bill was then passed and approved which included, with other amendments of Sec. 35, the provision now before us, omitting the limiting words which had been deemed to make the former provision applicable only to cases where pecuniary or property loss to the government had been caused.[16] The report of the Judiciary Com-

[15] For the text of this bill, see H.R. 8046, 73rd Cong., 2d Sess. which provides as follows: "* * * That every person who with intent to defraud the United States knowingly or wilfully makes or aids or assists in the making, or who with such intent in any wise procures the making or presentation of any false or fraudulent affidavit, declaration, statement, certificate, voucher, or paper or writing purporting to be such, concerning or pertaining to any application, bond, bid, loan or payment thereof, or concerning or pertaining to any matter within the jurisdiction of any department, establishment, administration, agency, office, board, or commission of the United States or any corporation owned or controlled by the United States in whole or in part, shall be punished * * *."

[16] In reporting out this bill the Committee of Judiciary of the House stated "the rights of the accused are protected by the provision that the act must be committed wilfully and knowingly and with intent to defraud the United States." (H. Rept. No. 829 to accompany H.R. 8046).

The bill (H.R. 8912) which was resubmitted after the President's veto, contained the original language of clause 2 of Section 80, "with the intent of cheating and swindling or defrauding the government of the United States" (H. Rep't. No. 1463, May 3, 1934, to accompany H.R. 8912) and passed the House in this form (78 Cong. Rec. pt. 6, pp. 8136-37.) This bill, however, was amended in the Senate (S. Rep't. 1202, May 28, 1934, 78 Cong. Rec. pt. 6, pp. 9790, 11270, 73 Cong. 2nd sess.) and, as finally enacted, omitted not only "cheating and swindling" but also "or defrauding the government of the United States." (*ibid*, p. 11270)

mittee of the Senate stated that the amendment in question had been proposed by the Department of the Interior with the purpose 'of reaching a large number of cases involving the shipment of "hot" oil, where false papers are presented in connection therewith."

In light of the legislative history of the amendment, the construction of the statute as it existed prior to the amendment, in *United States* v. *Cohn*, 270 U. S. 339, the purpose of the amendment to reach false papers, and the elimination of the words "with intent to defraud" and "defrauding" from the bill as finally enacted, it is submitted that, as this Court stated of the perjury statute in the *Noveck* case and of the Revenue Act in the *Scharton* case, both *supra*, the purpose to defraud the United States is not an element of the crime defined in Section 1001. Intent to defraud does not affect the charge, it need not be proved, and it may be rejected as mere surplusage. The *Gilliland* case, *supra*, itself, conclusively establishes that intent to defraud is not an essential ingredient of the offense.[17] See also *United States* v. *Mellon*, 96 F. (2d) 462, cert. den. 304 U. S. 586; *United States* v. *Presser*, 99 F. (2d) 819; *United States* v. *Goldsmith*, 108 F. (2d) 917, cert. den. 309 U. S. 678; *Ex parte Berkhoff*, 65 Fed. Supp. 976, 979, 159 F. (2d) 6; *United States* v. *Zavala*, 139 F. (2d) 830, 831.

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[17] It cannot be argued, as the Government attempted to do in *Marzani* v. *United States*, *supra*, that although the 1934 amendment to Section 80 of Title 18, United States Code (the predecessor of and identical with Section 1001, Title 18, here involved) eliminated as an element of the offense the phrase "for the purpose and with the intent * * * *of defrauding the United States*," the concept of an intent to defraud was retained by the 1934 amendment by providing that such statement must be made knowingly and wilfully. In the first place, the words "knowingly and wilfully" were not substituted for the intent formerly required before the amendment of 1934, as those words were in the original Act of 1918 and were carried over to the 1934 amendment. Moreover, the word "wilful" generally means no more than that the person charged with a duty knows what he is doing. It is not a substitute for or the equivalent of intent to defraud. See *Evans* v. *United States*, 153 U.S. 584,

It has been otherwise held that intent to defraud the United States is not an essential element, under false and fraudulent statutes, which in essential respects are identical with Section 1001 of Title 18. In *United States* v. *Van Leeuven*, 62 F. 69, 70 (D. C. Iowa. 1894), involving a statute making it a crime for one to "knowingly or wilfully make or aid or assist in the making * * * of any false or fraudulent affidavit * * * concerning any claim for pension * * * or pertaining to any other matter within the jurisdiction of the Commissioner of Pensions or of the Secretary of the Interior" (R. S. Sec. 4746, July 7, 1898, 30 Stat. 718. See 18 U.S.C.A. § 81 (now superseded by 18 U.S.C.A. § 289) and which statute, like the one in the present case, did not include the words "defrauding" or "with intent to defraud," a demurrer to the indictment was overruled in the following language:

> "* * * if the indictment was based upon the provisions of Sections 5418, 5421, or 5479 of the Revised Statutes (U.S.C. Title 18, §§ 72, 73), the failure to aver the intent or purpose of defrauding the United States would probably be fatal to the indictment as these sections are alike in the provision that the acts named therein must be done with the purpose of defrauding the United States; and under the ruling of the Supreme Court of the United States in *U. S.* v. *Staats*, 8 How. 40-45, the purpose to defraud the United States is one of the essentials in the definition of the crime. I do not understand, however, that the indictment in question

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587-592; *United States* v. *Scharton*, 285 U.S. 518; *Fields* v. *United States*, 82 U.S. App. D. C. 354, 357, 164 F. (2d) 97. Furthermore, even if it may be assumed that the words "knowingly and wilfully" could in a given case mean that a person acts with a bad purpose and with intent to break the law, it will be difficult to hold that the meaning of such words in a statute from which "intent to defraud" was stricken intentionally, operates to restore to such statute the very intent which Congress eliminated. Compare 18 U.S.C. § 1003, in which Congress expressly used the words "whoever knowingly and fraudulently" rather than the words "whoever knowingly and wilfully."

is based upon either one of these sections, but upon the provisions of Section 4746 which declares that 'every person who knowingly or wilfully in any wise procures the making or presentation of any false or fraudulent affidavit concerning any claim for pension or payment thereof or pertaining to any other matter within the jurisdiction of the Commissioner of Pensions . . . shall be punished, etc.' The gist of this offense is not in an effort to defraud the United States but it consists in knowingly procuring the making of a false or fraudulent affidavit concerning a claim for pension or payment thereof, or any other matter within the jurisdiction of the Commissioner of Pensions. The statute does not in terms make an intent or purpose to defraud the United States an element in the offense and the facts necessary to fully make out the crime can be averred without charging the intent to defraud the United States."

See also *United States v. Hansee*, 79 F. 803 (C.C.N.Y. 1897) in which it was stated that no intent to defraud under this statute was required and an offense was committed if a person knowingly and wilfully procured the presentment of a false or fraudulent affidavit in support even of a just claim.

Based upon the foregoing decisions of this Court and the lower courts, it is respectfully submitted that defrauding the United States is not an essential element of the offense as defined by Section 1001 of Title 18, United States Code. To hold that fraud is an element of Section 1001 by incorporating such element from the Wartime Suspension of Limitations Act would be to create a new and separate offense contrary to the principles established by this Court in the *Noveck* and *Scharton* cases. The crime alleged in the indictment involved in the present case cannot be classified as a fraud under Section 1001 any more than the false statements in the *Noveck* case was classified as a fraud by the

perjury statute. Certainly there is no more fraud implicit in the present case than there was implicit in the false and fraudulent income tax returns involved in the *Scharton* case.

In addition to the fact that Section 1001 of Title 18 does not involve as an essential ingredient of the crime, a fraudulent intent, it is submitted, that the term "fraud" as used in the Suspension Act involves also a pecuniary or property loss to the United States.

The term "defrauding" has two accepted meanings. The usual and primary meaning of defraud is cheating the Government out of property or money. See *United States* v. *Cohn*, 270 U. S. 339, 346-57; *Hammerschmidt* v. *United States*, 265 U. S. 185, 188.

In other cases involving statutes where it is apparent that more was intended, defrauding has been held to have a secondary meaning of interfering with or obstructing lawful governmental functions by dishonest means. *United States* v. *Keitel*, 211 U. S. 370, 393; *Haas* v. *Henkel*, 216 U. S. 462, 479-480. In statutes where neither the language nor the context warrants an extension of the term "defrauding" or "fraud" to a secondary and broader meaning, these terms should be construed in their primary sense of cheating the government out of property or money. In this respect, it is submitted, that the term "fraud" as it appears in the first clause of the Suspension Act, 18 U.S.C., Sec. 3287, is limited to its primary sense of cheating the Government out of property or money. There are no words extending the meaning of the word beyond this primary sense. While it is apparent that in connection with the word "fraud" the words "in any manner, whether by conspiracy or not" are used, these relate to the methods of defrauding and not to the scope. If Congress had used, as it did in the general conspiracy statute (18 U.S.C. § 371) the words "or for any

purpose" the case may be different. To defraud the United States in any manner "or for any purpose" would cover the broadest definition of fraud, as appears from the cases under the Conspiracy Statute. Had Congress in enacting the Suspension Act intended to extend the meaning of the term "fraud" beyond its usual and primary sense, it could easily have done so by broadening the language to read "defrauding, whether by conspiracy or not, in any manner, or for any purpose." The failure to do so indicates an intent to restrict the term to its usual and primary meaning. This, it is submitted, is the effect of the holdings in the *Noveck* and *Scharton* cases, *supra*. See also *Marzani* v. *United States*, *supra*. Any contention to the contrary has been laid to rest by these decisions. If pecuniary loss is not an element of the offense covered by Section 1001 of Title 18, United States Code, the statute of limitations with respect to such offense is not suspended.

A consideration of the legislative history of the Wartime Suspension of Limitations Act leading to the enactment of the original Act in 1942 and its subsequent amendments, supports the contention that the term "fraud" as used in that Act was intended in its primary sense. See Senate Report No. 1544 and House Report No. 2051 to accompany H. R. 6484, 77th Cong. 2d Sess. (See excerpts set forth in Appendix hereto.)

It is apparent from these Reports that the reason for the enactment of the suspension statute in 1942 was the difficulty and time involved in investigating, discovering and gathering evidence to prosecute frauds in connection with the great expenditures of money by the Government for war materials and equipment and the necessary concern of the Department of Justice with enforcement of other laws, particularly those relating to espionage, sabotage, and other measures pertaining to the security of the country, which

prevented the discovery, investigation and prosecution of war contract frauds within the three year period of limitation. Nothing appears in the legislative history which negatives the apparent intent of Congress that the fraud involved in the suspension statute pertained to a pecuniary or financial loss resulting from such fraud; on the contrary such intent is affirmatively stated. Thus, as appears, in the Report, Congress was concerned, as was the Congress after the first World War, with ferreting out unscrupulous and fraudulent war contractors without being bound by a three year period of limitations. This clearly appears in the following language of the House Report (No. 2051):

> "During normal times the present three year statute of limitations may afford the Department of Justice sufficient time to investigate, discover and gather evidence to prosecute fraud against the government. The United States, however, is engaged in a gigantic war program. Huge sums of money are being expended for materials and equipment in order to carry on the war successfully. Although steps have been taken to prevent and prosecute frauds against the government, it is recognized that in the varied dealings, opportunities will no doubt be presented for unscrupulous persons to defraud the government or some agency. These frauds may be difficult to discover as is often true of this type of offense and many of them may not come to light for some time to come. The law enforcement branch of the Government is also busily engaged in its other duties, including the enforcement of the espionage, sabotage and other laws."

No reason appears for extending the meaning of the words "defrauding" or "fraud" beyond their primary sense of cheating or depriving the Government of property or money. Consequently, the Suspension Act is applicable only where defrauding in this primary sense is an essential

ingredient under the statute defining the offense. The same rule of strict construction should be applied as was applied to its earlier counterpart found in the *Noveck* and *Scharton* cases. Section 1001 of Title 18, U. S. Code, does not involve such an element.

For the foregoing reasons it is respectfully submitted, that Section 1001 of Title 18, United States Code, is not an offense falling within the purview of the Wartime Suspension of Limitations Act, and that, therefore, the judgment of the lower court holding such Act inapplicable to the case at bar, should be affirmed. See *United States* v. *Shoso Nii*, 86 F. Supp. 971, now pending on direct appeal to this Court, No. 409, this Term, which case, appellee understands, involves the same question discussed herein.

Conclusion

It is respectfully submitted, therefore, for the foregoing reasons the order of the District Court dismissing the indictment should be affirmed.

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November 1951.

APPENDIX

Excerpts from House Report No. 2051; 77th Cong., 2d Sess.:

"The purpose of the proposed legislation is to suspend any existing statute of limitations applicable to offenses involving the defrauding or attempting to defraud the United States or any agency thereof for the period of the present war. Contracting for the United States is done through various agencies, including the departments and independent establishments and government owned and government controlled corporations and frauds against all of these agencies are intended to be embraced by the bill.

"During the World War many frauds committed against the government were not discovered until the three year Statute of Limitations had almost expired and, as stated in the Committee report hereafter referred to many of the alleged offenses were barred from prosecution. The general criminal statute (Rev. Stat. Sec. 1044) was amended on November 17, 1921, extending the period to six years in respect to offenses involving frauds against the U. S. (42 Stat. 220 U.S.C. Title 18, Sec. 582). This provision was repealed by the Act of December 22, 1927 (45 Stat. 51).

"In connection with the World War legislation of this character, the committee Report (H. Rep. 365, 67th Cong.) stated the following:

" 'The Department of Justice has been engaged in the investigation and is now engaged in the investigation of various alleged offenses, consisting largely of frauds against the government which are claimed to have occurred during the war with Germany and since its conclusion. Many of these alleged offenses grew out of the contractual relation of the Government with various persons and corporations engaged in the furnishing of military and naval supplies of various kinds. Many of these transactions require

the most minute investigation to ascertain the exact facts, and in every case a considerable period must elapse before such facts may be gathered from the files and other sources that the Department may know whether prosecutions are justified or not. In many cases, months and perhaps considerably longer periods will be required for such investigations. Under the existing statute of limitations quoted above many of these alleged crimes are already barred and in all such cases under the law, no prosecutions can be had if any might be thought advisable.

* * *

"During normal times the present three year statute of limitations may afford the Department of Justice sufficient time to investigate, discover and gather evidence to prosecute fraud against the government. The United States, however, is engaged in a gigantic war program. Huge sums of money are being expended for materials and equipment in order to carry on the war successfully. Although steps have been taken to prevent and prosecute frauds against the government, it is recognized that in the varied dealings, opportunities will no doubt be presented for unscrupulous persons to defraud the government or some agency. These frauds may be difficult to discover as is often true of this type of offense and many of them may not come to light for some time to come. The law enforcement branch of the Government is also busily engaged in its other duties, including the enforcement of the espionage, sabotage and other laws."